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Education

COMPLETED

ORIGINAL

34

PART 400 TO END
Revised as of July 1, 1982

022-003-94818-0

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code of federal regulations

Education

34

PART 400 to End

Revised as of July 1, 1982

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Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

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Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

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JOHN E. BYRNE,
Director,
Office of the Federal Register.

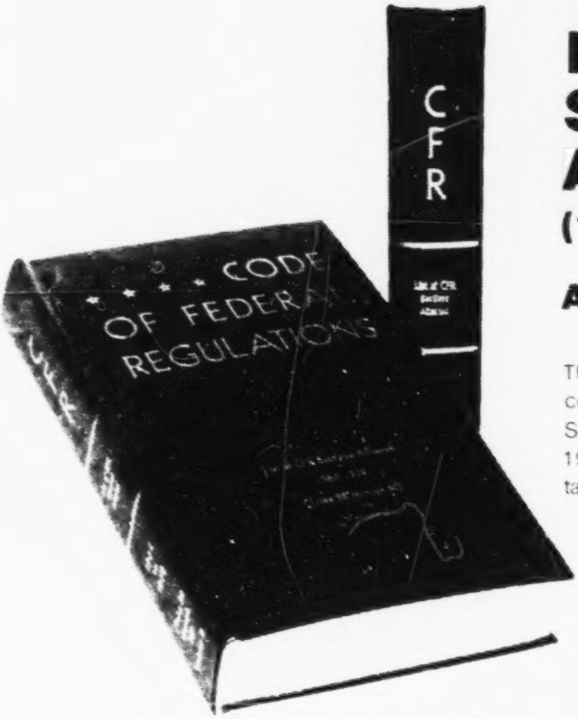
July 1, 1982.

THIS TITLE

Title 34—EDUCATION is presently composed of two volumes (Parts 1 to 399 and Part 400 to End). The contents of these volumes represent all regulations codified under this title of the CFR as of July 1, 1982.

A Redesignation Table appears in the Finding Aids section of each volume.

For this volume Denise L. Landon was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.



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Title 34—Education

(This book contains Part 400 to End)

EDITORIAL NOTE: Title 34—Education was established at 45 FR 30803, May 9, 1980, effective May 4, 1980. Nomenclature changes affecting Title 34 (Part 400-End) appear at 45 FR 86301, Dec. 30, 1980.

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AUTHORITY: Secs. 101-195 of Title II of Pub. L. 94-482 as further amended by Pub. L. 95-40 (20 U.S.C. 2301 to 2461), unless otherwise noted.

SOURCE: 42 FR 53828, Oct. 3, 1977, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart 1—State Administration

§ 400.1 Scope.

Part 400 contains regulations interpreting or implementing Part A of Title I of the Vocational Education Act of 1963, as amended by Title II of the Education Amendments of 1976, Pub. L. 94-482 (referred to as "the Act").

(Secs. 101 through 150, 195; 20 U.S.C. 2301)

§ 400.2 Purpose.

(a) The purpose of Part A of the Act, as stated in section 101 of the Act, the "Declaration of Purpose," is to assist States in improving planning in the use of all resources available to the States for vocational education and manpower training by involving a wide range of agencies and individuals concerned with education and training within the State in the development of the vocational education plans.

It is also the purpose of this part to authorize Federal grants to States to assist them—

(1) To extend, improve, and, where necessary, maintain existing programs of vocational education,

(2) To develop new programs of vocational education,

(3) To develop and carry out such programs of vocational education within each State so as to overcome sex discrimination and sex stereotyping in vocational education programs (including programs of homemaking), and thereby furnish equal educational opportunities in vocational education to persons of both sexes, and

(4) To provide part-time employment for youths who need the earnings from such employment to continue their vocational training on a full-time basis, so that persons of all ages in all communities of the State, those in high school, those who have completed or discontinued their formal education and are preparing to enter the labor market, those who have already entered the labor market, but need to upgrade their skills or learn new ones, those with special educational handicaps, and those in postsecondary schools, will have ready access to vocational training or retraining which is of high quality, which is realistic in the light of actual or anticipated opportunities for gainful employment, and which is suited to their needs, interests, and ability to benefit from such training.

(b) The purpose of these regulations is to assist the States, local educational agencies, postsecondary institutions, and other institutions capable of carrying out vocational education programs, to administer the federally assisted State programs of vocational education under the Act.

(Sec. 101; 20 U.S.C. 2301)

§ 400.3 Regulations that apply to State Vocational Education Programs.

(a) *Regulations.* The following regulations apply to State Vocational Education Programs:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-Administered Programs) and Part 77 (Definitions).

(2) The regulations in this Part 400.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Department" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Department programs; and

(2) Applying for assistance under a Department program.

(20 U.S.C. 1221e-3(a)(1))

[45 FR 22530, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 400.4 Cross reference to definitions.

Definitions necessary for the understanding of 34 CFR Parts 400 and 408 are set forth in Part C of Title I of the Act (section 195 of the Act) and as Appendix A at the end of Part 408 of these regulations. Some additional definitions necessary for the understanding of Part 408 appear in Part 408.

(Sec. 195; 20 U.S.C. 2461)

§ 400.5 Requirements under Part B of the Education of the Handicapped Act.

(a) Regulations under Part B of the Education of the Handicapped Act are located in 34 CFR Part 300.

(20 U.S.C. 1417(b))

(b) Section 612(6) of the Education of the Handicapped Act requires that the State educational agency be responsibile for ensuring that all educational programs for handicapped children within the State, including all of those programs administered by any other State or local agency, are under the general supervision of persons responsible for educational programs for handicapped children in the State educational agency.

(20 U.S.C. 1412(6))

(c) Section 613(a)(2) of the Education of the Handicapped Act requires each State to insure that funds provided under this part to assist in the education of handicapped children are used only in a manner consistent with a goal of providing a free appropriate public education for all handicapped children.

(d) Paragraph (c) of this section does not limit the requirements of this part or the statutes under which this part is authorized.

(20 U.S.C. 1413(a)(2))

(e) Section 612(6) of the Education of the Handicapped Act requires that any activity to assist the education of handicapped children under this part shall meet the educational standards of the State educational agency.

(20 U.S.C. 1412(6))

(f) Section 616(a)(2)(B) of the Education of the Handicapped Act provides that the Secretary may withhold payments available under this part for assisting the education of handicapped children:

(1) For failure to comply substantially with any provision of section 612 or 613 of the Education of the Handicapped Act; or

(2) In the administration of the annual program plan under Part B of the Education of the Handicapped Act for failure to comply with:

(i) Any provision of Part B of the Education of the Handicapped Act; or

(ii) Any requirements in the application of a local educational agency or intermediate educational unit approved by the State educational agency under that annual program plan.

(g) The Secretary will use the notice and hearing procedures in section 616 of the Education of the Handicapped Act before withholding payments under this section.

(20 U.S.C. 1416)

STATE BOARD

§ 400.31 Establishment of State board.

(a) A State desiring to participate in programs under the Act shall, consistent with State law, designate or establish a State board or agency which shall be the sole State agency responsible for the administration, or for the supervision of administration, of programs under the Act.

(b) The State board is solely accountable to the Secretary for the State's expenditure of Federal vocational education funds.

(Sec. 104(a)(1); 20 U.S.C. 2304; Sen. Rept. No. 94-882, p. 72)

§ 400.32 Responsibilities of the State board.

The responsibilities of the State board include (but are not limited to):

(a) Coordination of the development of policy with respect to programs under the Act (as set forth in §§ 400.162, 400.163, 400.204, and 400.205);

(b) Coordination of the development of the five-year State plan (as set forth in § 400.181), the annual program plan (as set forth in §§ 400.221 and 400.222), and the accountability report (as set forth in § 400.241);

(c) The submission to the Secretary of the five-year State plan, the annual program plan, and the accountability report; and

(d) Consultation with the State advisory council on vocational education and with other State agencies, councils, and individuals (as set forth in § 400.162)

(Sec. 104(a)(1) (A), (B), and (C); 20 U.S.C. 2304)

(e) Cooperation with the Administrator of the National Center for Educational Statistics in the development and submission of information required for a national vocational education data reporting and accounting system.

(Sec. 161(a); 20 U.S.C. 2391)

§ 400.33 Delegation of functions.

The State board may delegate any of its responsibilities (except those responsibilities set forth in § 400.32), in whole or in part, to one or more appropriate agencies.

(Sec. 104(a)(1); 20 U.S.C. 2304)

§ 400.31 State administration and leadership.

The State board shall provide for a State staff sufficiently qualified by education and experience and in sufficient numbers to enable the State board to carry out its functions under the State plan. The State board staff shall include a full-time State director.

(Implements sec. 104(a)(1) and sec. 106(a)(1))

FULL-TIME PERSONNEL AND FUNCTIONS TO ELIMIATE SEX DISCRIMINATION AND SEX STEREOTYPING

§ 400.71 Scope.

Sections 400.72 through 400.76 apply only to the fifty States and the District of Columbia. (These sections do not apply to the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, Northern Mariana Islands, or the Trust Territory of the Pacific Islands.)

(Sec. 104(b)(3); 20 U.S.C. 2304)

§ 400.72 Selection of full-time personnel to eliminate sex discrimination and sex stereotyping.

(a) A State desiring to participate in the programs authorized by the Act shall select personnel to work full time to assist the State board in fulfilling the purposes of the Act concerned with:

(1) Furnishing equal educational opportunities in vocational education programs to persons of both sexes; and

(2) Eliminating sex discrimination and sex stereotyping from all vocational education programs.

(Secs. 101(3), 104(b)(1); 20 U.S.C. 2301, 2304)

(b) In selecting the full-time professional personnel, the State shall match the qualifications of the applicants with the responsibilities of the job.

(Implements Sec. 104(b)(1); 20 U.S.C. 2304)

§ 400.73 Definitions.

The following definitions apply for the purposes of §§ 400.72 through 400.76 and throughout the Act and regulations.

(a) "Sex bias" means behaviors resulting from the assumption that one sex is superior to the other.

(b) "Sex stereotyping" means attributing behaviors, abilities, interests, values, and roles to a person or group of persons on the basis of their sex.

(c) "Sex discrimination" means any action which limits or denies a person or a group of persons opportunities, privileges, roles, or rewards on the basis of their sex.

(Implements Sec. 104(b); 20 U.S.C. 2304)

§ 400.74 Funds for full-time personnel and functions.

(a) Each State shall expend not less than $50,000 in each fiscal year from funds available under basic grants (section 120 of the Act) to support the personnel working full time to carry out the functions set forth in § 400.75.

(Secs. 104(b)(2), 120(b)(1)(F); 20 U.S.C. 2304, 2330)

(b) Funds set aside under paragraph (a) of this section shall be used for:

(1) Salaries for full-time professional staff;

(2) Salaries for support staff; and

(3) Travel and other expenses directly related to the support of personnel in carrying out the functions set forth in § 400.75.

(Implements Sec. 104(b); 20 U.S.C. 2304)

§ 400.75 Functions of full-time personnel.

Personnel designated under § 400.72 shall work full time to:

(a) Take action necessary to create awareness of programs and activities in vocational education designed to reduce sex bias and sex stereotyping in all vocational education programs, including assisting the State board in publicizing the public hearings on the State plan in accordance with § 400.165(a);

(b) Gather, analyze, and disseminate data on the status of men and women students and employees in vocational education programs of the State;

(c) Develop and support actions to correct problems brought to the attention of this personnel through activities carried out under paragraph (b) of this section, and § 400.76, including creating awareness of the Title IX complaint process;

(d) Review the distribution of grants and contracts by the State board to assure that the interests and needs of women are addressed in all projects assisted under this Act;

(e) Review all vocational education programs (including work-study programs, cooperative vocational education programs, apprenticeship programs, and the placement of students who have successfully completed vocational education programs) in the State for sex bias;

(f) Monitor the implementation of laws prohibiting sex discrimination in all hiring, firing, and promotion procedures within the State relating to vocational education;

(g) Assist local educational agencies and other interested parties in the State in improving vocational education opportunities for women; and

(h) Make available to the State board, the State advisory council, the National Advisory Council on Vocational Education, the State Commission on the Status of women, the Secretary, and the general public, including individuals and organizations in the State concerned about sex bias in vocational education, information developed under this section;

(Sec. 104(b)(1); 20 U.S.C. 2304)

(i) Review the self-evaluations required by Title IX; and

(Implements Sec. 104(b)(1); 20 U.S.C. 2304)

(j) Review and submit recommendations with respect to overcoming sex bias and sex stereotyping in vocational education programs for the five-year State plan and its annual program plan prior to their submission to the Secretary for approval.

(Secs. 104(b)(1), 109(a)(3)(B); 20 U.S.C. 2304, 2309)

§ 400.76 Studies to carry out functions.

A State may use funds available under section 130 of the Act to support studies necessary to carry out the functions set forth in § 400.75.

(Implements Sec. 104(b)(1); 20 U.S.C. 2304)

STATE ADVISORY COUNCIL

§ 400.91 Establishment and certification.

(a) *Establishment.* A State which desires to receive funds under the Act and the regulations in this part for any fiscal year shall establish a State advisory council. The council shall be appointed by the Governor or, in a State in which the members of the State board are elected, by the State board itself.

(Sec. 105(a); 20 U.S.C. 2305)

(b) *Appointment by the State board.* In order for the appointment power to be vested in the State board, under the authority of paragraph (a) of this section, a majority of its members must be individuals elected by the State legislature or directly by the eligible voters of the State or of the districts which the individuals represent.

(Interprets Sec. 105(a); 20 U.S.C. 2305)

(c) *Certification.* The appointing authority, required by paragraph (a) of this section, shall certify to the Secretary the establishment and membership of its State advisory council not less than 90 calendar days before the beginning of each fiscal year.

(Sec. 105(b); 20 U.S.C. 2305)

§ 400.92 Membership.

(a) *Required representation.* The membership of the State advisory council shall include one or more individuals who:

(1) Represent, and are familiar with, the vocational needs and problems of management in the State;

(2) Represent, and are familiar with, the vocational needs and problems of labor in the State;

(3) Represent, and are familiar with, the vocational needs and problems of agriculture in the State;

(4) Represent State industrial and economic development agencies;

(5) Represent community and junior colleges;

(6) Represent other institutions of higher education, area vocational

schools, technical institutes, and postsecondary agencies or institutions which provide programs of vocational or technical education and training;

(7) Have special knowledge, experience, or qualifications with respect to vocational education but are not involved in the administration of State or local vocational education programs;

(8) Represent, and are familiar with, public programs of vocational education in comprehensive secondary schools;

(9) Represent, and are familiar with, nonprofit private schools;

(10) Represent, and are familiar with, vocational guidance and counseling services;

(11) Represent State correctional institutions;

(12) Are vocational education teachers presently teaching in local educational agencies;

(13) Are currently serving as superintendents or other administrators of the local educational agencies;

(14) Are currently serving on local school boards;

(15) Represent the State Manpower Services Council established pursuant to section 107 of the Comprehensive Employment and Training Act of 1973;

(16) Represent school systems with large concentrations of persons who have special academic, social, economic, and cultural needs and of persons who have limited English-speaking ability;

(17) Are women with backgrounds and experiences in employment and training programs, and who are knowledgeable with respect to the special experiences and problems of sex discrimination in job training, and employment, and of sex stereotyping in vocational education, including women who are members of minority groups having special knowledge of the problems of discrimination in job training and employment against women in minority groups;

(18) Have special knowledge, experience, or qualifications with respect to the special educational needs of physically or mentally handicapped persons;

(19) Represent the general public, including at least one person representing and knowledgeable about the poor and disadvantaged; and

(20) Are vocational education students who are not qualified for membership under any of the preceding clauses of this sentence.

(Sec. 105(a); 20 U.S.C. 2305)

(b) *Special considerations.* The appointing authority, pursuant to paragraph (a) of this section, shall insure that:

(1) The State advisory council has as a majority of its members persons who are not educators or administrators in the field of education;

(2) Members of the State advisory council do not represent more than one category;

(Sec. 105(a); 20 U.S.C. 2305)

(3) There is appropriate representation of both sexes, racial and ethnic minorities, and the various geographic regions of the State. The Secretary considers the term "appropriate representation" to be representation which generally reflects the percentage of women or minorities in the population of the State or the percentage of women or minorities in the work force of the State.

(Implements Sec. 105(a); 20 U.SC. 2305)

(4) In order to avoid any conflict of interest, the membership of the State advisory council excludes members of the State board and members of its staff who are directly involved in State administration of vocational education.

(Implements Sec. 105 (a), (e); 20 U.S.C. 2305)

(c) *Term of appointment.* Members of the State advisory council shall be appointed for terms of three years except that:

(1) In the case of the members appointed for fiscal year 1978, one-third of the membership shall be appointed for terms of one year each and one-third shall be appointed for terms of two years each;

(2) An appointment to fill a vacancy shall be for the term that remains unexpired; and

(Sec. 105(a); 20 U.S.C. 2305)

(3) Members serving on the State advisory council on October 1, 1977, may continue to serve for the terms for which they were appointed, but for not more than two fiscal years unless reappointed.

(Sec. 204(b); 20 U.S.C. 2301 note)

§ 400.93 Functions and responsibilities.

The State advisory council shall:

(a) Advise the State board in the development of the five-year State plan submitted under the authority of § 400.181, the annual program plan submitted under the authority of §§ 400.221, and 400.222, and the accountability report submitted under the authority of § 400.241. A statement describing its consultation with the State board shall be submitted with the five-year State plan, and the annual program plan and accountability report under § 400.171(f).

(Sec. 105(d)(1); 20 U.S.C. 2305)

(b) Advise the State board on policy matters arising out of the administration of programs under the approved five-year State plan, the annual program plan, and the accountability report;

(Sec. 105(d)(1); 20 U.S.C. 2305)

(c) Evaluate vocational education programs (including programs to overcome sex bias), services, and activities under the annual program plan, and publish and distribute the results thereof;

(Sec. 105(d)(2); 20 U.S.C. 2305)

(d) Assist the State board in developing plans for State board evaluations under the authority of § 400.401 and monitor these evaluations;

(Sec. 112(b)(2); 20 U.S.C. 2312)

(e) Prepare and submit through the State board to the Secretary and to the National Advisory Council an annual evaluation report, accompanied by any additional comments of the State board as the State board deems appropriate;

(Sec. 105(d)(3); 20 U.S.C. 2305)

(f) Identify, after consultation with the State Manpower Services Council, the vocational education and employment and training needs of the State and assess the extent to which vocational education, employment training, vocational rehabilitation, special education, and other programs assisted under this and related Acts represent a consistent, integrated, and coordinated approach to meeting these needs;

(Interprets Sec. 105(d)(4)(A); 20 U.S.C. 2305)

(g) Comment, at least annually, on the reports of the State Manpower Services Council;

(Sec. 105(d)(4)(B); 20 U.S.C. 2305)

(h) Prepare and submit to the Secretary within 60 calendar days after the Secretary's acceptance of certification of establishment and membership, submitted pursuant to § 400.91(c), an annual budget covering the proposed expenditures of the State advisory council for the following fiscal year; and

(Implements Sec. 105(f); 20 U.S.C. 2305)

(i) Provide technical assistance to eligible recipients and local advisory councils as may be requested by the recipients to establish and operate local advisory councils.

(Sec. 105(g); 20 U.S.C. 2305)

§ 400.94 Meetings and rules.

The State advisory council shall meet within 30 calendar days after certification has been accepted by the Secretary and shall select from among its membership a chairperson. The time, place, manner of meetings, as well as the councils operating procedures and staffing, shall be as provided by the rules of the State advisory council. The rules shall provide for not less than one public meeting each year at which the public is given an opportunity to express views concerning the vocational education program of the State.

(Sec. 105(c); 20 U.S.C. 2305)

§ 400.95 Staff and services.

(a) The State advisory council is authorized:

(1) To obtain the services of professional, technical, and clerical personnel as may be necessary to enable it to

carry out its functions described in § 400.93. Such personnel shall not include staff members of the State board and shall be subject only to the supervision and direction of the State advisory council with respect to all services performed by them.

(2) To contract for such services as may be necessary to carry out its evaluation functions, independent of programmatic and administrative control by other State boards, agencies, and individuals.

(Implements sec. 105(e); 20 U.S.C. 2305)

(b) Members of the State advisory council and its staff, while serving on the business of the council, may receive subsistence, travel allowances, and compensation in accordance with State law, regulations, and practices applicable to persons performing comparable duties and services.

(Implements sec. 105(e); 20 U.S.C. 2305)

§ 400.96 Fiscal control.

(a) The State advisory council shall designate an appropriate State agency or other public agency, eligible to receive funds under the Act, to act as its fiscal agent for purposes of disbursement and accounting and for having its accounts audited at least every two years. The fiscal agent shall send a copy of the audit report to the Secretary.

(Implements sec. 105(f)(2); 20 U.S.C. 2305)

(b) The expenditure of council funds is determined solely by the State advisory council for carrying out its function except as provided in § 400.95(b). Council funds may not be diverted or reprogrammed for any other purpose by any State board, agency, or individual.

(Sec. 105(f)(2); 20 U.S.C. 2305)

(c) All expenditures of council funds shall be in accordance with the budget approved by the Secretary under the authority of § 400.93(h).

(Implements sec. 105(f)(2); 20 U.S.C. 2305)

(d) The State advisory council shall submit to the Secretary a financial status report within 90 days after the end of the fiscal year.

(34 CFR 76.403)

§ 400.97 Annual evaluation report.

The State advisory council shall prepare and submit to the Secretary and to the National Advisory Council on Vocational Education, through the State board, within 90 days after the end of the fiscal year an annual evaluation report under the authority of § 400.93(e). This report shall include:

(a) The results of the evaluations by the State advisory council of the effectiveness of programs, services, and activities carried out in the year under review in meeting the program goals set forth in the five-year State plan and the annual program plan.

(Sec. 105(d)(3)(A); 20 U.S.C. 2305)

(b) A review of the program evaluation results developed by the State under the authority of § 400.401;

(c) A review of the analysis of the distribution of Federal funds within the State submitted by the State according to the annual program plan and the accountability report;

(Sec. 105(d)(3)(A); 20 U.S.C. 2305)

(d) Recommended changes in programs, services, and activities as may be considered necessary by the State advisory council based on the results of its evaluation;

(Sec. 105(d)(3)(B); 20 U.S.C. 2305)

(e) Comments on the reports of the State Manpower Services Council; and

(Sec. 105(d)(4)(B); 20 U.S.C. 2305)

(f) Identification of the vocational education and employment and training needs of the State and the assessment of the extent to which vocational education, employment training, vocational rehabilitation, special education, and other programs assisted under this and related Act represent a consistent, integrated, and coordinated approach to meeting such needs.

(Sec. 105(d)(4)(A); 20 U.S.C. 2305)

LOCAL ADVISORY COUNCILS

§ 400.111 Establishment of local advisory councils.

(a) Each eligible recipient (that is, each local educational agency or postsecondary educational institution which receives Federal assistance under the Act) shall establish a local advisory council on vocational education.

(b) The local advisory council may be established for:

(1) Program areas;

(2) Schools;

(3) The community; or

(4) The region in which the eligible recipient is located.

(c) The local advisory council shall be composed of representatives of the general public including at least a representative of:

(1) Business;

(2) Industry; and

(3) Labor.

(Sec. 105(g)(1); 20 U.S.C. 2305)

(d) Each eligible recipient shall establish a local advisory council which has an appropriate representation of both sexes and an appropriate representation of the racial and ethnic minorities found in the program areas, schools, community, or region which the local advisory council serves.

(e) An eligible recipient may form a local advisory council composed of representatives from several craft committees, or representatives of several school councils, having the requisite representation in paragraph (c) of this section.

(Implements sec. 105(g)(1); 20 U.S.C. 2305)

§ 400.112 Duties of local advisory councils.

(a) The local advisory council shall advise the eligible recipient on:

(1) Current job needs; and

(2) The relevance of programs (courses) being offered by the local educational agency or postsecondary educational agency in meeting current job needs.

(Sec. 105(g)(1); 20 U.S.C. 2305)

(b) The local advisory council shall consult with the eligible recipient in developing its application to the State board.

(Sec. 106(a)(4)(A); 20 U.S.C. 2306)

VOCATIONAL EDUCATION INFORMATION DATA SYSTEM

§ 400.116 Vocational education data system.

(a) The Secretary and the Administrator of NCES will jointly develop information elements and uniform definitions for a national vocational education data reporting and accounting system.

(b) This system will include information resulting from the evaluations under section 112(b) of the Act (§§ 400.402 and 400.404) and other information on vocational:

(1) Students (including information on their race and sex);

(2) Programs;

(3) Program completers and leavers;

(4) Staff;

(5) Facilities; and

(6) Expenditures.

(c) This system will be compatible insofar as possible with the occupational information data system developed under section 161(b) of the Act of the National Occupational Information Coordinating Committee and with other information systems involving data on programs assisted under CETA.

(Interprets 161(a); 20 U.S.C. 2391)

§ 400.117 Conditions for compliance.

(a) The Administrator and the Secretary review data submissions by the States to verify that they comply with data requirements.

(b) The Administrator recommends and the Secretary determines that the State has met the minimum conditions for compliance with the vocational education data reporting requirements if it meets the standards in either § 400.118 or § 400.119 of this section.

(Implements 161(a); U.S.C. 2391)

[45 FR 30636, May 9, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 400.118 Fully meets requirements.

A State fully meets its data submission requirements if it—

(a) Utilizes standard definitions as developed by the NCES Administrator and the Secretary in reporting the data;

(b) Provides all the requested data by the date specified by NCES; and

(c) Provides data that is certified to be accurate and of audit quality by the sole State Board for Vocational Education.

(Implements 161(a); U.S.C. 2391)

[45 FR 30636, May 9, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 400.119 Substantially meets requirements.

(a) A State substantially meets its data submission requirements if it—

(1) Includes a significant proportion of the data required in each of the following major areas:

(i) Students (including information on their race and sex),

(ii) Programs,

(iii) Program completers and leavers,

(iv) Staff,

(v) Expenditures; and

(2) (i) Identifies the items of required information that the State has not provided, and provides an acceptable item by item justification for the omission of these data items from its report; and

(ii) Provides an acceptable remediation plan that details how the State will proceed to supply NCES with the required information.

(b) (1) Where State law prohibits the collection or submission of omitted data, the State shall detail in its remediation plan how it will proceed to supply NCES with the required information.

(2) Acceptable justifications for the omitted data, for purposes of paragraph (a)(2)(i) of this section (where substantiation is provided), include but are not limited to:

(i) A State's inability to collect a mandatory data element due to the lack of adequate lead time for the inclusion of the particular element in the State's data collection plan;

(ii) A State's inability to provide data by the exact definitions in the instructions provided by NCES, if the State provides similiar data;

(iii) A State's inability to provide data that is auditable to the original source (e.g., students), if the State provides reasonable statistical estimates;

(iv) A State's utilization of a proxy variable as a replacement for an actual measurement (e.g., economic disadvantage measured by participation in the free or reduced lunch program);

(v) A State's inability, for technical reasons, to provide specific data at the required time, if the State provides that data at a later date (e.g., data on leavers).

(3) Adequate justification for failing to submit data for the purpose of a finding of compliance shall not be based on costs or burden, or a State's position that the data is not useful.

(c) For purposes of paragraph (a)(2)(ii) of this section an acceptable remediation plan shall include the following:

(1) A description of the overall procedures to be implemented to supply the requested data;

(2) Any specific changes to be made in data collection methods;

(3) Detailed descriptions of deficiencies in existing procedures and how these are to be remedied; and

(4) A detailed timetable for the proposed changes that will be completed as soon as feasible.

(Implements 161(a); 20 U.S.C. 2391)

[45 FR 30636, May 9, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

NATIONAL AND STATE OCCUPATIONAL INFORMATION COORDINATING COMMITTEES

§ 400.121 Establishment of National Occupational Information Coordinating Committee.

Section 161(b) of the Act establishes a National Occupational Information Coordinating Committee composed of the Secretary and the Administrator of the National Center for Education Statistics, from the Department of Education and the Assistant Secretary of Labor for Employment and Training and the Secretary of the Bureau of Labor Statistics, from the Department of Labor.

(Sec. 161(b); 20 U.S.C. 2391(b))

§ 400.122 Requirement to establish State occupational information coordinating committees.

(a) Each State receiving assistance under the Act is required by section

161(b)(2) of the Act to establish a State occupational information coordinating committee by September 30, 1977.

(Implements sec. 161(b)(2); 20 U.S.C. 2391)

(b) The State occupational information coordinating committee shall be composed of a representative of each of the following:

(1) The State board;

(2) The State employment security agency;

(3) The State Manpower Services Council; and

(4) The agency administering the vocational rehabilitation program.

(Sec. 161(b)(2); 20 U.S.C. 2391)

(c) The representatives shall be selected by the respective State board, agency, or council.

(Implements secs. 103(a)(1)(A), 161(b)(2); 20 U.S.C. 2302, 2391)

§ 400.123 Duties of the State occupational information coordinating committee.

(a) The State occupational information coordinating committee, with funds available to it from the National Occupational Information Coordinating Committee shall implement an occupational information system in the State which will meet the common needs for the planning for, and operation of, programs of the State board assisted under this Act and of the administering agencies under the Comprehensive Employment Training Act.

(Sec. 161(b)(2); 20 U.S.C. 2391)

(b) A State occupational information coordinating committee shall use funds received from the National Occupational Information Coordinating Committee in accordance with guidance, direction or standards adopted by the National Occpuational Information Coordinating Committee.

(Implements sec. 161(b)(2); 20 U.S.C. 2391)

GENERAL APPLICATION

§ 400.141 Requirement for filing a general application.

(a) In order to participate in programs authorized under the Act, the State board for vocational education must submit to, and maintain on file with, the Secretary a general application.

(Sec. 106(a); 20 U.S.C. 2306)

(b) This general application must be signed by the executive officer of the State board and submitted by the State board to the Secretary by July 1, 1977, for eligibility for Federal funds under the Act.

(c) This general application is filed only once with the Secretary and shall remain in effect until the provisions of section 106 of the Act are changed or expire.

(Implements sec. 106(a); 20 U.S.C. 2306; Sen. Rept. No. 94-882, pp. 68-72)

(d) This general application is in place of the general State application required by 34 CFR 76.101 of EDGAR.

(Sec. 106(b); 20 U.S.C. 2306)

(e) The procedures to be used by the State board to carry out assurances 4, 5, 9, and 10 in the general application shall be included in the five-year State plan (§ 400.182).

(Implements sec. 109(a)(1); 20 U.S.C. 2309)

(f) This general application shall contain the following 12 assurances; of these, ten are set forth in section 106(a) of Act:

(1) That the State will provide for such methods of administration as are necessary for the proper and efficient administration of the Act;

(2) That the State board will cooperate with the State advisory council on vocational education in carrying out its duties pursuant to section 105 and with the agencies, councils, and individuals specified in sections 107 and 108 to be involved in the formation of the five-year State plan and of the annual program plans and accountability reports;

(3) That the State will comply with any requests of the Secretary for making such reports as the Secretary may reasonably require to carry out his functions under this Act;

(4) That funds will be distributed to eligible recipients on the basis of annual applications which——

(A) Have been developed in consultation (i) with representatives of the educational and training resources available in the area to be served by the applicant and (ii) with the local advisory council required to be established by this Act to assist such recipients,

(B) (i) Describe the vocational education needs of potential students in the area or community served by the applicant and indicate how, and to what extent, the program proposed in the application will meet such needs, and (ii) describe how the findings of any evaluations of programs operated by such applicant during previous years, including those required by this Act, have been used to develop the program proposed in the application,

(C) Describe how the activities proposed in the application relate to manpower programs conducted in the area by a prime sponsor established under the Comprehensive Employment and Training Act of 1973, if any, to assure a coordinated approach to meeting the vocational education and training needs of the area or community, and

(D) Describe the relationship between vocational education programs proposed to be conducted with funds under this Act and other programs in the area or community which are supported by State and local funds;

and that any eligible recipient dissatisfied with final action with respect to any application for funds under this Act shall be given reasonable notice and opportunity for a hearing;

(5) (A) That the State shall, in considering the approval of such applications, give priority to those applicants which—

(i) Are located in economically depressed areas and areas with high rates of unemployment, and are unable to provide the resources necessary to meet the vocational education needs of those areas without Federal assistance, and

(ii) Propose programs which are new to the area to be served and which are designed to meet new and emerging manpower needs and job opportunities in the area and, where relevant, in the State and the Nation; and

(B) That the State shall, in determining the amount of funds available under this Act which shall be made available to those applicants approved for funding, base such distribution on economic, social and demographic factors relating to the needs for vocational education among the various populations and the various areas of the State, except that—

(i) The State will use as the two most important factors in determining this distribution (I) in the case of local educational agencies, the relative financial ability of such agencies to provide the resources necessary to meet the need for vocational education in the areas they service and the relative number or concentration of low-income families or individuals within such agencies, and (II) in the case of other eligible recipients, the relative financial ability of such recipients to provide the resources necessary to initiate or maintain vocational education programs to meet the needs of their students and the relative number or concentration of students whom they serve whose education imposes higher than average costs, such as handicapped students, students from low-income families, and students from families in which English is not the dominant language; and

(ii) The State will not allocate such funds among eligible recipients within the State on the basis of per capita enrollment or through matching of local expenditures on a uniform percentage basis, or deny funds to any recipient which is making a reasonable tax effort solely because such recipient is unable to pay the non-Federal share of the cost of new programs;

(6) That Federal funds made available under this Act will be so used as to supplement, and to the extent practicable, increase the amount of State and local funds that would in the absence of such Federal funds be made available for the uses specified in the Act, and in no case supplant such State or local funds;

(7) That the State will make provision for such fiscal control and fund accounting procedures as may be necessary to secure proper disbursement of, and accounting for, Federal funds paid to the State (including such funds paid by the State to eligible recipients under this Act);

(8) That funds received under this Act will not be used for any program of vocational education (except personnel training programs under section 135, renovation programs under subpart 4 of part B, and homemaking programs under subpart 5 of this part) which cannot be demonstrated to prepare students for employment, be necessary to prepare individuals for successful completion of such a program, or be of significant assistance to individuals enrolled in making an informed and meaningful occupational choice as an integral part of a program of orientation and preparation;

(9) That the State has instituted policies and procedures to insure that copies of the State plan and annual program plan and accountability report and all statements of general policies, rules, regulations, and procedures issued by the State board and by any State agencies to which any responsibility is delegated by the State board concerning the administration of such plan and report will be made reasonably available to the public; and

(10) That the funds used for purposes of section 110(a) are consistent with the State plan submitted pursuant to section 613(a) of the Education of the Handicapped Act.

(Sec. 106(a); 20 U.S.C. 2306)

(11) The State board shall also assure that it will cooperate with the Administrator of

the National Center for Education Statistics, ED, in supplying information and complying in its reports with the information elements and definition requirements, as specified in section 161(a) of the Act.

(Implements sec. 161(a); 20 U.S.C. 2391)

(12) The State board shall also assure that students served by Indian tribal organizations applying for or receiving funds under the Secretary's discretionary programs, under authority of section 103(a)(1)(B) of the Act, shall be afforded the opportunity to participate in vocational education programs administered by the State.

(Implements sec. 103(a)(1)(B); 20 U.S.C. 2303)

[42 FR 53828, Oct. 3, 1977, as amended at 45 FR 22530, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

DEVELOPMENT OF FIVE-YEAR STATE PLAN

§ 400.161 Submission of five-year State plan.

Any State desiring to receive funds under the Act shall submit to the Secretary a five-year State plan by:

(a) July 1, 1977, for fiscal years 1978 through 1982; and

(b) July 1, 1982, for fiscal years 1983 through 1987.

(Sec. 107(a)(1); 20 U.S.C. 2307)

§ 400.162 Representation required in the development of the five-year State plan.

In formulating its five-year State plan, the State board is required to involve the active participation of a representative of:

(a) The State agency having responsibility for secondary vocational education programs, designated by that agency;

(b) The State agency, if a separate agency exists, having responsibility for postsecondary vocational education programs, designated by that agency;

(c) The State agency, if a separate agency exists, having responsibility for community and junior colleges, designated by that agency;

(d) The State agency, if a separate agency exists, having responsibility for institutions of higher education in the State, designated by that agency;

(Sec. 107(a)(1); 20 U.S.C. 2307)

(e) A local school board or committee, as designated by the appropriate appointing authority under State law;

(Interprets sec. 107(a)(1)(E); 20 U.S.C. 2307)

(f) Vocational education teachers, as designated by the appropriate appointing authority under State law;

(Interprets sec. 107(a)(1)(E); 20 U.S.C. 2307)

(g) Local school administrators, as designated by the appropriate appointing authority under State law;

(Interprets sec. 107(a)(1)(G); 20 U.S.C. 2307)

(h) The State Manpower Services Council appointed under the authority of section 107(a)(2)(A)(i) of the Comprehensive Employment and Training Act of 1973, designated by that Council;

(i) The State agency or commission responsible for comprehensive planning in postsecondary education, which planning reflects programs offered by public, private nonprofit, and proprietary institutions, and includes occupational programs at a less-than-baccalaureate degree level, if a separate agency or commission exists, designated by that agency or commission; and

(j) The State advisory council on vocational education, designated by that council.

(Sec. 107(a)(1); 20 U.S.C. 2307)

§ 400.163 Meetings of participating representatives.

The State board shall convene, as a group, the representatives of the agencies, councils, and individuals specified in § 400.162 for at least four meetings during the development of the five-year State plan. These meetings will be convened to accomplish the following purposes:

(a) *First meeting:* To plan for the development of the first draft of the five-year State plan;

(b) *Second meeting:* To consider the first draft of the five-year State plan;

(c) *Third meeting:* To consider the draft of the five-year State plan after it has been rewritten to reflect the results of the second meeting of the planning group; and

(d) *Fourth meeting:* To recommend for adoption the final five-year State plan.

(Sec. 107(a)(1); 20 U.S.C. 2307)

§ 400.164 State board adoption of the five-year State plan.

(a) If the participating agencies, councils, and individuals are not able to agree upon the provisions of the five-year State plan, the State board will make a final decision.

(b) In accordance with § 400.171(b)(1), the State board shall include in the five-year State plan:

(1) Any recommendation which is rejected by the State board indicating its source (i.e., the name of the individual and agency or council affiliation); and

(2) The reasons of the State board for rejecting the recommendation.

(Sec. 107(a)(1); 20 U.S.C. 2307)

§ 400.165 Public hearings on the five-year State plan.

(a) In formulating the five-year State plan, the State board is required to conduct a series of public hearings. This series of public hearings shall be conducted:

(1) During the development, prior State plan;

(2) After giving sufficient public notice; and

(3) Throughout all regions of the State.

(b) The purpose of these public hearings is to provide the opportunity for all segments of the population of the State to give their views on:

(1) The goals which ought to be adopted in the State plan;

(2) The programs to be offered under the State plan;

(3) The allocation of responsibility for programs (courses) among the various levels of education and among the various institutions of the State; and

(4) The allocation of local, State, and Federal resources to meet these goals.

(c) In accordance with § 400.171(d), the State board shall include in the five-year State plan:

(1) The views expressed at the public hearings or comments submitted in writing;

(2) A description of how these views are reflected in the provisions of the five-year State plan; and

(3) The reasons for rejecting any view which is not accepted for inclusion in the five-year State plan.

(Sec. 107(a)(2); 20 U.S.C. 2307)

§ 400.171 Certification of plans.

As used in this section, the term "plans" refers to the five-year State plan and the annual program plan and accountability report. The plans submitted shall include, as attachments, the following certifications:

(a) [Reserved]

(b) *Certification of involvement of designated agencies.* (1) The State board shall certify that each of the agencies, councils, and individuals required in § 400.162 has been afforded the opportunity to be involved. The State board shall include in this certification all recommendations rejected by the Board, complete identification of the agency, council, or individual having made the rejected recommendation and the reasons for rejecting these recommendations, as required by § 400.164(b). This certification shall also indicate the meetings held under the authority of § 400.163.

(2) Each representative required in § 400.162 shall certify that he or she has had the opportunity to participate actively in formulating the plan.

(Implements sec. 104(a)(3), 107(a)(1); 20 U.S.C. 2304, 2307)

(c) *Certification of delegation.* The State board shall certify any delegation by the State board of responsibilities for administration, operation, or supervision of vocational education programs to other appropriate State agencies. The statement shall set forth the procedures used for delegation, the specific responsibilities delegates, and the specific agency or agencies involved.

(Implements sec. 104(a)(2); 20 U.S.C. 2304)

(d) *Certification of public hearings.* The State board shall certify the method used to provide reasonable notice and opportunity for public hearings throughout all regions of the State in order to permit all segments of the population to give their views on the goals for vocational educational which ought to be adopted in the plan in terms of the elements listed in §§ 400.165(b) and 400.207(b). The statement shall also include the views expressed at the hearings and a description of how those views are reflected in the plan. If any views are not reflected, the statement shall set out the reasons for rejecting them.

(Implements sec. 107(a)(2), 108(a)(2); 20 U.S.C. 2307, 2308)

(e) *Certification of local advisory councils.* The State board shall certify that eligible recipients within the State have been notified of their responsibility to establish local advisory councils. The State board shall also certify that eligible recipients receiving assistance under the Act to operate vocational education programs have established these councils.

(Implements sec. 105(g); 20 U.S.C. 2305)

(f) *Certification of consultation with State advisory council.* The State advisory council shall certify that the plan was prepared in consultation with the council.

(Implements sec. 105(d); 20 U.S.C. 2305)

(g) *Certification by full-time personnel of opportunity to review the plans.* The personnel assigned full time to review programs within the State to assure equal access to vocational education by both men and women shall certify that the opportunity to review the plan has been afforded.

(Implements sec. 109(a)(3)(B); 20 U.S.C. 2309)

[42 FR 53828, Oct. 3, 1977, as amended at 45 FR 22530, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 400.181 Content of five-year State plan.

The State board shall submit the five-year State plan to the Secretary, through the appropriate ED Regional Office, by the July 1st preceding the beginning of the first fiscal year for which the plan is to take effect. The plan shall be composed of the following two parts:

(a) Procedures for carrying out certain assurances of the general application as required in § 400.182; and

(b) Program provisions as required in §§ 400.183 through 400.188.

(Sec. 107(b); 20 U.S.C. 2307)

§ 400.182 Procedures to assure compliance with the general application.

The State board in its five-year State plan shall:

(a) Describe the information which the State board will require in local applications in order to meet the requirements of § 400.141(f)(4);

(Sec. 106(a)(4); 20 U.S.C. 2306)

(b) Describe the procedures for affording eligible recipients reasonable notice of an opportunity for a hearing, for conducting the hearing, for providing a written record of the hearing, and for informing the recipient in writing of the decisions and reasons therefor;

(Implements sec. 106(a)(4); 20 U.S.C. 2306)

(c) Describe how the State board, for purposes of giving priority to applications, determines:

(1) Economically depressed areas and areas with high rates of unemployment which are unable to provide the resources necessary to meet the vocational education needs without Federal assistance; and

(2) Programs new to the area which are designed to meet new and emerging manpower needs and job opportunities in the area (and, where relevant, in the State and Nation);

(Implements sec. 106(a)(5)(A); 20 U.S.C. 2306)

(d) Describe the policies and procedures by which the State board determines how the amount of funds available under this Act will be made available to those applicants approved for funding, using the factors specified in § 400.141(f)(5)(B);

(Sec. 106(a)(5)(B); 20 U.S.C. 2306)

(e) Set forth the policies and procedures instituted for public disclosure in accordance with § 400.141(f)(9); and

(Sec. 106(a)(9); 20 U.S.C. 2306)

(f) Describe the procedures for insuring that funds for vocational programs for handicapped persons are used in a manner consistent with

§ 400.141(f)(10). The statement shall describe how the program provided each handicapped child will be planned and coordinated in conformity with and as a part of the child's individualized educational program as required by the Education of the Handicapped Act.

(Sec. 106(a)(10); 20 U.S.C. 2306)

§ 400.183 Assessment of employment opportunities.

(a) The five-year State plan shall include an assessment of current and future needs for workers (job skills) within the State and, where appropriate, within the pertinent region of the country.

(b) This assessment shall reflect the latest available data of present and projected employment, including the data available from the State occupational information coordinating committee.

(Sec. 107(b)(1); 20 U.S.C. 2307)

§ 400.184 Goals to meet employment needs.

The five-year State plan shall describe clearly the goals the State will seek to achieve with respect to its needs for workers identified in § 400.183 by the end of the five-year period covered by the five-year State plan. This description shall be in terms of the following four elements and shall include the reasons for choosing these elements:

(a) The programs (courses) and other training opportunities to be offered to meet the needs identified in § 400.183; (For the purposes of this part, the term "program" refers to ED instructional programs, as defined by the Department in *Handbook VI, Standard Terminology for Curriculum and Instruction in Local and State School Systems* (1970), and means a planned sequence of courses, services, or activities designed to meet an occupational objective.)

(b) The projected enrollments of these programs and training opportunities;

(c) The allocations of responsibility for the offerings of those programs and training opportunities among the secondary, postsecondary, and adult levels of education and among the various types of institutions of the State; and

(d) The allocations of all local, State, and Federal financial resources available in the State for the programs and training opportunities among the secondary, postsecondary, and adult levels of education and among the various types of institutions of the State.

(Sec. 107(b)(2); 20 U.S.C. 2307)

§ 400.185 Funding to meet employment needs.

(a) The five-year State plan shall set forth precisely the planned uses of Federal, State, and local education funds for each fiscal year of the State plan;

(b) The five-year State plan shall indicate how this allocation of funds will meet the goals identified in § 400.184;

(c) The description of the planned uses of funds shall be in terms of the four elements of § 400.184 (this does not require duplication of § 400.184 (d));

(Sec. 107(b)(3)(A); 20 U.S.C. 2307)

(d) The five-year State plan shall indicate the planned uses of funds under section 120(b)(1)(0) and section 130(b)(7) of this Act for:

(1) State administration;

(2) Local administration; and

(Implements sec. 107(b)(3)(A); 20 U.S.C. 2307)

(e) The five-year State plan shall set forth the reasons for choosing these particular uses of funds, except that the State will continue to use approximately the same amount of its State grant under Subpart 2 (basic grant) of this part for programs in secondary schools during fiscal years 1978 and 1979 as it used during fiscal years 1975 and 1976, unless the State is able to demonstrate in its five-year State plan the need to shift funds from that use.

(Sec. 107(b)(3)(A); 20 U.S.C. 2307)

§ 400.186 Funding to meet program (purpose) needs.

(a) The five-year State plan shall set forth precisely the intended uses of funds under the Act for:

(1) Basic grant programs in § 400.501;

(2) Program improvement and supportive services in § 400.701;

(3) Special programs for the disadvantaged in § 400.801 (funded under section 102(b) of the Act); and

(4) Consumer and homemaking education in § 400.901 (funded under section 102(c) of the Act.)

(b) The five-year State plan shall set out the reasons for choosing the uses described in paragraph (a) of this section.

(c) The five-year State plan shall set forth precisely the intended uses of Federal funds, in accordance with the minimum percentages in §§ 400.312 and 400.313 to meet the special needs of:

(1) Handicapped persons;

(2) Disadvantaged persons; and

(3) Persons of limited English-speaking ability.

(d) The five-year State plan shall also set forth the intended allocation of State and local funds, in accordance with the matching requirements in § 400.303, to meet the needs of:

(1) Handicapped persons;

(2) Disadvantaged persons; and

(3) Persons of limited English-speaking ability.

(Implements secs. 107(b)(3)(B), 110(a), (b); 20 U.S.C. 2307, 2310)

§ 400.187 Policies for eradicating sex discrimination.

(a) The five-year State plan shall set forth a detailed description of policies and procedures which the State will follow to assure equal access to vocational education programs by both women and men.

This description shall include:

(1) Actions to be taken to overcome sex discrimination and sex stereotyping in all State and local vocational education programs;

(i) Encourage the enrollment of both women and men in nontraditional courses of study; and

(ii) Develop model programs to reduce sex bias and sex stereotyping in training for and placement in all occupations.

(b) The five-year State plan shall set forth a program to assess and meet the needs of persons described in § 400.621. This program shall include:

(1) Special courses for these persons to learn how to seek employment; and

(2) Placement services for these persons once they complete the vocational education program.

(Sec. 107(b)(4); 20 U.S.C. 2307)

§ 400.188 Coordination between manpower training programs and vocational education programs.

The five-year State plan shall describe the mechanism established for coordinating vocational education programs with manpower training programs conducted by prime sponsors under the Comprehensive Employment and Training Act (CETA), Pub. L. 93-203, and vocational education programs assisted under this Act. This description shall include the criteria developed to avoid duplication of programs under this Act and CETA.

(Sec. 107(b)(5); 20 U.S.C. 2307; Sen. Rept. 94-882; p. 68)

DEVELOPMENT OF ANNUAL PROGRAM PLAN AND ACCOUNTABILITY REPORT

§ 400.202 Due date of annual program plan.

For each fiscal year, the annual program plan is due by the July 1st preceding the beginning of the applicable fiscal year. For example, the first annual program is required for fiscal year 1978 and is due in the appropriate ED Regional Office by July 1, 1977.

(Sec. 108(b); 20 U.S.C.2308)

§ 400.203 Due date of annual accountability report.

For each fiscal year, the annual accountability report is due by the July 1st following the completion of the applicable fiscal year. For example, the first annual accountability report is required for fiscal year 1978 and is due in the appropriate ED Regional Office by July 1, 1979.

(Sec. 108(b); 20 U.S.C. 2308)

§ 400.204 Representation required in the development of the annual program plan and accountability report.

In formulating the annual program plan and accountability report for any given fiscal year, the State board is required to involve the active participation of a representative of each group set forth in § 400.162 (a) through (j).

(Secs. 107(a)(1), 108(a)(1); 20 U.S.C. 2307, 2308)

§ 400.205 Meetings of participating representatives.

The State board shall convene, as a group, the representatives of the agencies, councils, and individuals specified in § 400.204 for at least three meetings during each fiscal year. These meetings will be convened to accomplish the following purposes:

(a) *First meeting:* To plan for the development of the first draft of the annual program plan and the accountability report;

(b) *Second meeting:* To consider the draft of the annual program plan and accountability report;

(c) *Third meeting:* To recommend for adoption the final annual program plan and accountability report.

(Sec. 108(a)(1); 20 U.S.C. 2308)

§ 400.206 State board adoption of the annual program plan and accountability report.

(a) If the participating agencies, councils, and individuals are not able to agree upon the provisions of the annual program plan or the accountability report, the State board will make a final decision.

(b) The State board shall include in the annual program plan or, as appropriate, in the accountability report:

(1) Any recommendation which is rejected by the State board indicating its source (including the name of the individual and agency or council affiliation); and

(2) The reasons of the State board for rejecting the recommendation.

(Sec. 108(a)(1); 20 U.S.C. 2308)

§ 400.207 Public hearing on the annual program plan and accountability report.

(a) In formulating the annual program plan and accountability report, the State board is required to conduct a public hearing. This public hearing shall be conducted:

(1) During the development, prior to adoption of the annual program plan and accountability report; and

(2) After giving sufficient public notice.

(b) The purpose of this public hearing is to provide an opportunity for all segments of the population of the State to give their views on:

(1) The goals which ought to be adopted in the annual program plan;

(2) The programs to be offered under the annual program plan;

(3) The allocation of responsibility for programs among the various levels of education and among the various institutions of the State; and

(4) The allocation of local, State, and Federal resources to meet these goals.

(Interprets sec. 108(a)(2); 20 U.S.C. 2308)

(c) The State board shall include in the annual program plan or, as appropriate, in the accountability report:

(1) The views expressed at the public hearing or comments submitted in writing;

(2) A description of how these views are reflected in the provisions of the annual program plan or the accountability report; and

(3) The reasons for rejecting any view which is not accepted for inclusion in the annual program plan or accountability report.

(Sec. 108(a)(2); 20 U.S.C. 2308)

§ 400.221 Content of annual program plan for fiscal year 1978.

A five-year State plan which includes the program provisions in §§ 400.183 through 400.186 on a year-by-year basis will meet the requirements of the Act for the annual program plan, except that in addition to the planned uses of funds in § 400.186, the plan shall also set out precisely the proposed distribution of such funds among eligible recipients, together with an analysis of the manner in which such distribution complies with the assurance given in the general application and in accordance with the policies and procedures in § 400.182(d).

(Interprets sec. 108(b)(1); 20 U.S.C. 2308)

§ 400.222 Content of annual program plans for the fiscal years following 1978.

The plan shall contain: (a) Any updating of the five-year State plan, as submitted under §§ 400.183 and 400.184, considered necessary to reflect later or more accurate employment data or a different level of funding than was anticipated;

(b) A description of how the uses of funds proposed for the fiscal year in § 400.185 will be complied with or changed (in light of anticipated appropriations) and the reasons for the changes;

(c) A description of how the uses of funds under the Act proposed for the fiscal year in § 400.186 will be complied with or changed (in light of anticipated appropriations) and the reasons for the changes;

(d) A description of how funds used in paragraphs (b) and (c) of this section, will comply with the minimum percentages, matching, and maintenance of effort requirements in § 400.301;

(e) The additional provisions set forth in § 400.221;

(f) The results of the:

(1) Coordination of programs funded under this Act and manpower training programs;

(2) Compliance of the State plan with the provisions contained in § 400.187 concerning providing equal access to programs by both men and women; and

(3) Participation of local advisory councils required to be established under § 400.171(e).

(Implements sec. 108(b)(1); 20 U.S.C. 2308)

§ 400.241 Content of the accountability report.

(a) The accountability report shall:

(1) Show the extent to which the State, during the fiscal year preceding the submission of the report, has achieved the goals of the approved five-year State plan, including a description in terms of the elements in § 400.184;

(2) Show the degree to which proposed uses of Federal, State, and local funds in § 400.222(b) have been complied with, including a description in terms of the elements in § 400.185;

(3) Show in detail how the funds used in § 400.222(d) complied with the minimum percentage, matching, and maintenance of effort requirements in § 400.301;

(Implements sec. 108(b)(2)(A))

(4) Show in detail how funds under the Act allocated for programs in § 400.186 have been used during the fiscal year, including:

(i) A description of uses of funds as set out in §§ 400.222(c);

(ii) A description of the distribution of funds available for these sections among local educational agencies and other eligible recipients in conformity with § 400.222(e); and

(iii) The results achieved by the uses of these funds.

(Sec. 108(b)(2)(B); 20 U.S.C. 2308)

(b) The accountability report shall contain:

(1) A summary of the evaluation of programs conducted by the State in accordance with §§ 400.402 and 400.404; and

(2) A description of how the evaluation information has been used to improve the State's programs of vocational education, including consideration given to each recommendation in the evaluation report of the State advisory council for vocational education.

(Sec. 108(b)(2)(C); 20 U.S.C. 2308)

APPROVAL OF FIVE-YEAR STATE PLAN AND ANNUAL PROGRAM PLAN AND ACCOUNTABILITY REPORT

§ 400.261 Conditions for approval of five-year State plan.

The Secretary will not approve a five-year State plan until the Secretary:

(a) Makes specific findings in writing as to the compliance of the five-year

State plan with the provisions of the Act and applicable regulations;

(b) Makes a determination that adequate procedures are set forth, in accordance with § 400.182, to insure that assurances of the general application will be carried out;

(c) Makes a determination that adequate procedures are set forth in the five-year State plan to insure that the provisions of the plan will be carried out;

(d) Has received assurances that the full-time personnel assigned to review programs within the State to assure equal access by both men and women have been afforded the opportunity to review the five-year State plan; and

(Sec. 109(a)(3)(B); 20 U.S.C. 2309)

(e) Makes a determination that the State has complied in preparing the five-year State plan with the nationally uniform definitions and information elements which have been developed under the authority of section 161 of the Act.

(Sec. 109(a)(3)(C); 20 U S.C. 2309)

§ 400.262 Conditions for approval of annual program plan and accountability report.

The Secretary will not approve an annual program plan and accountability report until the Secretary:

(a) Makes specific findings in writing as to the compliance of the annual program plan and accountability report with the provisions of the Act and applicable regulations;

(b) Makes a determination that adequate procedures are set forth to insure that the assurances of the general application will be carried out;

(c) Makes a determination that adequate procedures are set forth in the annual program plan and accountability report to insure that the provisions of the plan will be carried out;

(d) Makes a determination that the annual program plan and accountability report show progress in achieving the goals set forth in the approved five-year State plan;

(Sec. 109(a)(2); 20 U.S.C. 2309)

(e) Has received assurances that the full-time personnel assigned to review programs within the State to assure equal access by both men and women have been afforded the opportunity to review the annual program plan and accountability report; and

(Sec. 109(a)(3)(B); 20 U.S.C. 2309)

(f) Makes a determination that the State has complied in preparing the annual program plan and accountability report with the nationally uniform definitions and information elements which have been developed under the authority of section 161 of the Act.

(Sec. 109(a)(3)(C); 20 U.S.C. 2309)

WITHHOLDING OF APPROVAL OF PLAN

§ 400.271 Disapproval of plan.

The Secretary:

(a) [Reserved]

(b) Will not disapprove a State plan solely on the basis of the distribution of State and local expenditures for vocational education;

(Sec. 109(b)(2); 20 U.S.C. 2309)

[42 FR 53828, Oct. 3, 1977, as amended at 45 FR 22530, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

HEARINGS BEFORE THE SECRETARY ON AGENCY OR COUNCIL CHALLENGES TO THE FIVE-YEAR STATE PLAN OR THE ANNUAL PROGRAM PLAN

§ 400.281 Opportunity for a hearing.

(a) Sections 107 and 108 of the Act require the Secretary to provide an opportunity for a hearing to certain agencies and councils which may be dissatisfied with any final decision of the State board with respect to the proposed five-year State plan or the annual program plan filed with the Secretary.

(b) The agencies and councils which may request a hearing are those agencies and councils set forth in § 400.162 (a) through (d), and (h) through (j). A representative of an agency or council may not request a hearing in his or her individual capacity.

(Secs. 107(a), 108(a); 20 U.S.C. 2307; 2308)

(c) An agency or council may appeal to the Secretary only:

(1) Matters which the agency or council has recommended to the State

board for inclusion in the five-year State plan or annual program plan which the State board has not accepted (§ 400.164); or

(2) The State board's failure to follow the section 107 and section 108 process as to that agency or council.

(Interprets sec. 107(a), 108(a); 20 U.S.C. 2307, 2308)

§ 400.282 Appeal to the Secretary.

(a) If a hearing is to be requested, the notice of appeal shall be in writing, addressed to the Secretary and to the State board, and mailed by registered mail no later than fifteen (15) work days after the notification in writing has been received by the agency or council that the recommendations of the agency or council have been disapproved by the State board.

(b) Pending resolution of the matter for which a hearing has been requested, the five-year State plan or annual program plan submitted by the State board, if in substantially approvable form, may be conditionally approved by the Secretary and may be conditionally deemed the operative plan.

(Implements secs. 107(a), 108(a); 20 U.S.C. 2307, 2308)

§ 400.283 Hearing.

(a) The Secretary may delegate authority to an employee of the Department to be the hearing officer. The hearing officer shall take testimony, consider the arguments of the parties, make findings of fact, make conclusions of law, and make recommendations to the Secretary.

(b) The hearing officer shall give each party at least fifteen (15) work days notice of the time, place, and purpose of the hearing.

(c) The fifteen (15) work days notice of time and place of the hearing may be reduced or waived if all parties agree.

(d) The hearing may take place in Washington, D.C., or within the State whose agency or council is appealing, at the option of the requesting party and with the hearing officer's approval.

(e) The hearing officer may adjourn the hearing to a more satisfactory time or place on the motion of the hearing officer or on motion of a party.

(f) A record shall be kept of the hearing. The record may be taken by shorthand, stenotype, or mechanical or electrical means, and shall be transcribed.

(Implements sec. 107(a)(1); 20 U.S.C. 2307)

§ 400.284 Prehearing.

(a) The hearing officer may require a prehearing conference.

(b) The prehearing conference shall be conducted in an informal manner for the purpose of:

(1) Simplification of the issues;

(2) Exchange of documents;

(3) Stipulation of facts;

(4) Deciding on procedures at the hearing; and

(5) Such other matters as may properly be dealt with to aid in expediting the orderly conduct or disposition of the hearing.

(Implements sec. 107(a)(1); 20 U.S.C. 2307)

§ 400.285 Right to counsel, witnesses, cross examination.

(a) The parties shall have the right to be represented by counsel.

(b) The parties may offer evidence by witnesses appearing in person.

(c) Where a witness appears in person, the other party shall have the right to cross examine the witness.

(d) If a witness is unable to appear in person, documentary evidence or affidavits may be accepted in lieu of personal appearance. Affidavits shall be given only the probative value of a sworn statement which has not been subjected to cross examination.

(Implements sec. 107(a)(1); 20 U.S.C. 2307)

§ 400.286 Evidence and standard of evidence.

(a) Formal rules of evidence do not apply. The hearing officer shall restrict the admission of evidence to that which is material and relevant.

(b) The hearing officer may request additional evidence.

(c) Findings of fact shall be supported by substantial evidence. "Substantial evidence," for the purpose of this hearing, means such relevant evidence as a reasonable mind might accept to support a conclusion. (305 U.S. 197, 229 (1938).)

(Implements sec. 107(a)(1); 20 U.S.C. 2307)

§ 400.287 Determinations to be made by the hearing officer.

(a) The hearing officer shall determine, with reference to the matters subject to appeal (§ 400.218(c)):

(1) Whether the procedural requirements of the Act have been fulfilled;

(2) Whether the decisions of the State board as set forth in the five-year State plan or the annual program plan are in accordance with the law;

(3) Whether the decisions of the State board in the five-year State plan or the annual program plan are based on substantial evidence; and

(4) Whether the State board's decisions in the five-year State plan or the annual program plan best carry out the purposes of the Act.

(Sec. 107(a)(1); 20 U.S.C. 2307)

(b) Where the hearing officer decides that the State board has conformed with the provisions of paragraphs (a)(1), (2), and (3) of this section the hearing officer shall issue findings of fact to that effect.

(c) Where the hearing officer decides that the five-year State plan or the annual program plan will best carry out the purposes of the Act, the hearing officer shall recommend a finding for the State board.

(d) Where the hearing officer decides that the State board has not conformed with the provisions of paragraphs (a)(1), (2), and (3) of this section or that the five-year State plan or the annual program plan will not best carry out the purposes of the Act, the hearing officer shall recommend that the plan not be approved.

(Implements sec. 107(a)(1); 20 U.S.C. 2307)

§ 400.288 Secretary's decision.

(a) The findings of fact and recommendation of the hearing officer shall be conveyed to the parties and to the Secretary.

(b) The findings and recommendation of the hearing officer shall become the findings and decision of the Secretary unless the Secretary reverses the hearing officer's findings or recommendation, in whole or in part, within fifteen (15) work days after the date the hearing officer conveys his or her findings and recommendation to the Secretary.

(Implements sec. 107(a)(1); 20 U.S.C. 2307)

(c) The Secretary may not unilaterally change a five-year State plan or annual program plan. The Secretary shall approve a plan or disapprove a plan in its entirety and return it to the State board for revision.

(Implements sec. 107(a)(1); 20 U.S.C. 2307; Conf. Rept. No. 94-1701, pp. 216, 217)

APPEAL TO THE COURTS

§ 400.293 Appeal by eligible recipients to the court of appeals.

An eligible recipient dissatisfied with the final action of the State board (or other appropriate State administrative agency) with respect to approval of an application by such eligible recipient for a grant under this Act may appeal to the appropriate United States court of appeals as provided in section 109(e) of the Act.

(Sec. 109(e); 20 U.S.C. 2309)

FISCAL REQUIREMENTS

FEDERAL SHARE

§ 400.301 Application of Federal requirements.

(a)-(b) [Reserved]

(c) State and local funds that are applied to the maintenance of effort requirements of the Act are subject to the conditions and requirements of the Act, regulations, five-year State plan, and annual program plan.

(d) The Secretary accepts only actual expenditures of State and local funds as part of the State's matching and maintenance of effort requirements. This means that the State may not use in-kind contributions as part of its matching and maintenance of effort requirements.

[42 FR 53828, Oct. 3, 1977, as amended at 45 FR 22530, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 400.302 Federal share of expenditures—annual program plan.

(a) The Secretary will pay to each State from the funds available under Section 102(a) an amount not to exceed 50 percent of the cost of carrying out its annual program plan.

(b) The State's matching share of expenditures under the annual program plan may be on a state-wide basis.

(c) Except for the fiscal requirements for the national priority programs described in § 400.303, State administration described in § 400.306, and local administration described in § 400.307, it is not necessary that Federal funds be matched by non-Federal funds for each purpose and program under the Act.

(Interprets sec. 111(a); 20 U.S.C. 2311)

§ 400.303 Federal share of expenditures—national priority programs.

(a) The Secretary will pay to each State an amount not to exceed 50 percent of the excess cost (i.e., costs of special educational and related services above the costs for non-handicapped students) of programs, services, and activities under the basic grant in Subpart 2 and program improvement and supportive services in Subpart 3 for handicapped persons.

(b) The Secretary will pay to each State an amount not to exceed 50 percent of:

(1) The excess cost (i.e., costs of special educational and related services above the costs for non-disadvantaged persons) of programs, services, and activities under the basic grant in Subpart 2 and program improvement and supportive services in Subpart 3 for disadvantaged persons (other than handicapped persons);

(2) The excess cost (i.e., costs of special education and related services above the costs for persons who are not classified as persons of "limited English-speaking ability") of programs, services, and activities under the basic grant in Subpart 2 and program improvement and supportive services in Subpart 3 for persons who have limited English-speaking ability; and

(3) Stipends for students entering or already enrolled in vocational education programs who have acute economic needs which cannot be met under work-study programs.

(c) The Secretary will pay to each State an amount not to exceed 50 percent of the cost of programs, services, and activities under the basic grant in Subpart 2 and program improvement and supportive services in Subpart 3 for:

(1) Postsecondary programs for: (i) Persons who have completed or left high school; (ii) who are enrolled in organized programs of study for which credit is given toward an associate or other degree; and (iii) who are not enrolled in programs designed as baccalaureate or higher degree programs; and

(2) Adult programs for: (i) Persons who have already entered the labor market; (ii) persons who are unemployed; or (iii) persons who have completed or left high school and who are enrolled in organized programs of study for which credit is not given toward an associate or other degree.

(Sec. 110; 20 U.S.C. 2310)

§ 400.304 Allowable expenditures for vocational education for national priority programs.

A State shall use the funds allotted for national priority programs under section 110 of the Act only for expenditures which are attributable to vocational education programs, services, and activities described in § 400.303.

(Section 110; 20 U.S.C. 2310; 45 CFR 100, App. B, Part II)

§ 400.305 Federal share of expenditures—100 percent payments.

(a) The Secretary will pay to each State an amount up to 100 percent of the cost of:

(1) Cooperative vocational education programs which include students enrolled in nonprofit private schools pursuant to secton 122(f) of the Act;

(2) Exemplary and innovative programs which include students enrolled in nonprofit private schools pursuant to section 132(b) of the Act; and

(3) Special programs for disadvantaged persons in areas of the State

which have high concentrations of youth unemployment or school dropouts under section 140 of the Act.

(b) The Secretary will pay to the Trust Territory of the Pacific Islands, the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa up to 100 percent of the cost of carrying out all programs listed in §§ 400.302 and 400.303.

(Sec. 111(a)(1); 20 U.S.C. 2311)

§ 400.306 Federal share of expenditures—State administration.

(a) The Secretary will pay, from the funds allotted pursuant to section 102(a) of the Act, up to 50 percent of the cost of administration of the five-year State plan and annual program plan, except as indicated in paragraphs (b) and (c) of this section.

(Sec. 111(a)(2)(B); 20 U.S.C. 2311)

(b) The Federal share of the cost of administration of the five-year State plan and annual program plan in fiscal year 1978 is up to 80 percent and in fiscal year 1979 is up to 60 percent.

(Sec. 111(a)(2)(B); 20 U.S.C. 2311)

(c) The Federal share of the cost of administration of the five-year State plan and annual program plan in fiscal year 1978 may be in excess of 80 percent under the following conditions:

(1) State and local expenditures for vocational education in a State for the latest fiscal year for which reliable data are available preceding fiscal year 1978 exceed the Federal expenditures for vocational education in that State by ten times. For example, if the Federal allocation in fiscal year 1977 is $2 million, the aggregate of State and local expenditures must be greater than $20 million; and

(2) The Secretary determines that the costs of administration of the five-year State plan and annual program plan in fiscal year 1977 were necessary for the proper and efficient performance of the State's duties under the Act; and

(3) The Secretary determines that the 80 percent ceiling on the Federal share of the cost of administration is insufficient to meet the needs of the State.

(d) The State shall use the following computation in determining its expenditure of Federal funds under paragraph (a) of this section, for administration of the five-year plan and annual program plan:

(1) Not more than 80 percent of the total amount used for State administration shall be made from the basic grant in Subpart 2;

(2) Not more than 20 percent of the total amount used for State administration shall be made from program improvement and supportive services in Subpart 3.

(e) The computation in paragraph (d) of this section does not require the State to use administrative funds in an 80/20 ratio between Subpart 2 and Subpart 3 activities. The State may use its administrative funds in whatever distribution best meets its needs.

(Interprets sec. 111(a)(2)(B); 20 U.S.C. 2311)

§ 400.307 Federal share of expenditures—local administration.

(a) The Secretary will pay, from the funds allotted pursuant to section 102(a) of the Act, a part of the costs of supervision and administration of vocational education programs carried out by an eligible recipient.

(b) The eligible recipient shall use either the method set forth in paragraph (b)(1) or (2) of this section in determining the payment of local administrative costs.

(1) The percentage of Federal funds used by an eligible recipient for the costs of supervision and administration of vocational education programs may be no greater than the percentage of Federal funds used to support the total vocational education program carried out by the eligible recipient. For example, the total cost of the vocational education program of the eligible recipient is $100,000 and the Federal contribution to this eligible recipient is $25,000, or 25 percent of the total. If local administrative costs are $10,000, then up to 25 percent of this amount, or $2,500, may be charged against the Federal funds.

(2) Up to 50 percent of the cost of supervision and administration of the vocational education program of the eligible recipient may be charged to

the Federal funds: *Provided,* That State funds match the Federal funds dollar for dollar. State funds used to match Federal funds shall be specifically made available for the purpose of local administration. For example, if the total cost of local administration is $10,000, then up to $5,000 may be charged to the Federal funds as long as the State contributes the same amount from a specific State appropriation.

(c) The State shall use the following computation in determining the amount of Federal funds available for the costs of local supervision and administration:

(1) Not more than 80 percent of the total amount used for supervision and administration by eligible recipients shall be made from the basic grant in Subpart 2.

(2) Not more than 20 percent of the total amount used for supervision and administration by eligible recipients shall be made from program improvement and supportive services in Subpart 3.

(d) The computation in paragraph (c) of this section does not require the State to use administrative funds in an 80/20 ratio between Subpart 2 and Subpart 3 activities. The State may use its administrative funds in whatever proportion best meets its needs.

(Interprets sec. 111(a); 20 U.S.C. 2311)

MINIMUM PERCENTAGES

§ 400.311 Percentage requirements with respect to State distribution of Federal funds.

The minimum percentages set forth in §§ 400.312, 400.313, and 400.314 are applicable to each State's allotment under section 102(a) of the Act.

(Interprets sec. 110(a); 20 U.S.C. 2510)

§ 400.312 Minimum percentage for the handicapped.

The State shall expend at least 10 percent of the allotment under section 102(a) of the Act for vocational education for handicapped persons as described in § 400.303(a). The State shall use these funds to the maximum extent possible to assist handicapped persons to participate in regular vocational education programs.

(Sec. 110(a); 20 U.S.C. 2310)

§ 400.313 Minimum percentage for the disadvantaged.

(a) The State shall expend at least 20 percent of the section 102(a) allotment, subject to the conditions of paragraph (b) of this section, for the following purposes:

(1) Vocational education for disadvantaged persons (other than handicapped persons) as described in § 400.303(b)(1);

(2) Vocational education for persons who have limited English-speaking ability as described in § 400.303(b)(2); and

(3) Stipends for students entering or already enrolled in vocational education programs who have acute economic needs which cannot be met under work-study programs.

(Sec. 110(b); 20 U.S.C. 2310)

(b) The State shall use, to the maximum extent possible, the funds expended for disadvantaged persons and persons of limited English-speaking ability to enable these persons to participate in regular vocational education programs.

(Sec. 110(d); 20 U.S.C. 2310)

(c) The State shall use the following formula in determining its expenditures of funds under paragraph (a) of this section for vocational education for persons who have limited English-speaking ability:

(1) First determine the amount of Federal funds reserved for the purposes of paragraph (a) of this section;

(2) Determine the population having limited English-speaking ability who are between the ages of 15 and 24 inclusively;

(3) Determine the total population of the State aged 15 to 24 inclusively;

(4) Divide step two by step three;

(5) Multiply the quotient from step four by the total amount reserved for paragraph (a) of this section as indicated in step one;

(6) Expend at least this amount for vocational education for persons having limited English-speaking abili-

ty. The amount expended for this purpose shall not exceed the total amount reserved for paragraph (a) of this section.

For example, a State reserves $500,000 for the purposes fo paragraph (a) of this section. The State determines its limited English-speaking population between the ages of 15 and 24 is 10,000. The total population of the State aged 15 to 24 is 200,000. 10,000 is divided by 200,000 and the quotient is .05. $500,000 is multiplied by .05 and the product is $25,000. Accordingly, the State expends at least $25,000 for vocational education for persons who have limited-English speaking ability, but no more than $500,000.

(Implements sec. 110(b)(2); 20 U.S.C. 2310)

§ 400.314 Minimum percentage for postsecondary and adult.

The State shall expend at least 15 percent of the section 102(a) allotment for vocational education for:

(a) Postsecondary programs for: (1) Persons who have completed or left high school;

(2) Who are enrolled in organized programs of study for which credit is given toward an associate or other degree; and

(3) Who are not enrolled in programs designed as baccalaureate or higher degree programs; and

(b) Adult programs for: (1) Persons who have already entered the labor market;

(2) Persons who are unemployed; or

(3) Persons who have completed or left high school and who are enrolled in organized programs of study for which credit is not given toward an associate or other degree.

(Sec. 110(c); 20 U.S.C. 2310)

§ 400.315 Expenditures for programs in secondary schools.

(a) The State shall expend from its allotment for the basic grant (Subpart 2) approximately the same amount of Federal funds for programs in secondary schools during fiscal years 1978 and 1979 as it had expended during fiscal years 1975 and 1976.

(b) The State shall set forth in the five-year State plan its justification for the need to shift funds in the event the projected Federal expenditures for programs in secondary schools, in either fiscal year 1978 or 1979 are not within 95 percent of the amount of Federal funds expended for programs in secondary schools during fiscal years 1975 and 1976.

(Interprets sec. 107(b)(3)(A); 20 U.S.C. 2307)

MAINTENANCE OF EFFORT

§ 400.321 Maintenance of fiscal effort at the State level.

A State shall maintain its fiscal effort on either a per student basis or on an aggregate basis for vocational education compared to the amount expended in the previous year.

(Sec. 111(b)(1); 20 U.S.C. 2311)

§ 400.322 Withholding of payments.

The Secretary will not make any payments to a State in a fiscal year unless the Secretary finds that the fiscal effort of the State or vocational education on a per student basis or on an aggregate basis in the previous fiscal year was not less than the fiscal effort of the State on a per student basis or on an aggregate basis in the second preceding fiscal year.

(Sec. 111(b)(1); 20 U.S.C. 2311)

§ 400.323 Five percent rule.

Total State fiscal effort for vocational education in the preceding fiscal year shall not be considered reduced from the fiscal year effort of the second preceding fiscal year unless the per student expenditure or aggregate expenditure in the preceding year is less than that in the second preceding fiscal year by more than five percent. For example, a State which expends an aggregate of $10 million for vocational education in one fiscal year and an aggregate of $9,600,000 in the succeeding fiscal year will not be considered to have reduced fiscal effort for the purposes of the Vocational Education Act.

(Interprets sec. 111(b)(1); 20 U.S.C. 2311)

§ 400.324 Unusual circumstance rule.

Any reduction in fiscal effort for any fiscal year by more than five percent will disqualify the State from receiving Federal funds unless the State is able to demonstrate to the satisfaction of the Secretary the following:

(a) In the preceding fiscal year, the reduction was occasioned by unusual circumstances that could not have been fully anticipated or reasonably compensated for by the State. Unusual circumstances may include unforeseen decreases in revenues due to the decline of the tax base;

(b) In the second preceding fiscal year, contributions of large sums of monies from outside sources were made; or

(c) In the second preceding fiscal year, large amounts of funds were expended for long-term purposes such as construction and acquisition of school facilities or the acquisition of capital equipment.

(Interprets sec. 111(b)(1); 20 U.S.C. 2311)

§ 400.325 Maintenance of fiscal effort at the local level.

A local educational agency shall maintain its fiscal effort on either a per student basis or on an aggregate basis for vocational education compared with the amount expended in the previous fiscal year.

(Sec. 111(b)(1); 20 U.S.C. 2311)

§ 400.326 Withholding of payments.

A State shall not make payment under this Act to a local educational agency unless the State finds that the combined fiscal effort of the State and local educational agency on a per student basis or on an aggregate basis of the local educational agency and the State, was not less than the combined fiscal effort in the second preceding fiscal year.

(Sec. 111(b)(1); 20 U.S.C. 2311)

§ 400.327 Exceptions.

The 5 percent rule applicable to the State in § 400.323 and the unusual circumstances rule in § 400.324 are also applicable to local educational agencies.

(Interprets sec. 111(b)(1); 20 U.S.C. 2311)

§ 400.328 Maintenance of fiscal effort by postsecondary educational institutions.

A postsecondary educational institution shall maintain its fiscal effort on either a per student basis or on an aggregate basis for vocational education compared with the amount expended in the previous fiscal year.

(Sec. 111(b)(2); 20 U.S.C. 2311)

§ 400.329 Withholding of payments.

A State shall not make any payment under this Act to a postsecondary educational institution unless the State finds that the fiscal effort on a per student basis or on an aggregate basis of that institution, with respect to the provision of vocational education, was not less than the fiscal effort of that institution in the second preceding fiscal year.

(Sec. 111(b)(2); 20 U.S.C. 2311)

§ 400.330 Exceptions.

The 5 percent rule applicable to the State in § 400.323 and the unusual circumstances rule in § 400.324 are also applicable to postsecondary educational institutions.

(Interprets sec. 111(b)(2); 20 U.S.C. 2311)

STATE EVALUATION

§ 400.401 Purpose.

The State evaluations are to be used to assist local educational agencies and other recipients of funds in operating the best possible programs of vocational education and to improve the State's programs of vocational education.

(Sec. 112(b)(1); 20 U.S.C. 2312)

§ 400.402 Evaluation by State board.

The State board shall, during the five-year period of the State plan, evaluate in quantitative terms the effectiveness of each formally organized program or project supported by Federal, State, and local funds. These evaluations shall be in terms of: (a) Planning and operational processes, such as:

(1) Quality and availability of instructional offerings;

(2) Guidance, counseling, and placement and follow-up services;

(3) Capacity and condition of facilities and equipment;

(4) Employer participation in cooperative programs of vocational education;

(5) Teacher/pupil ratios; and

(6) Teacher qualifications.

(b) Results of student achievement as measured, for example, by:

(1) Standard occupational proficiency measures;

(2) Criterion referenced tests; and

(3) Other examinations of students' skills, knowledge, attitudes, and readiness for entering employment successfully.

(c) Results of student employment success as measured, for example, by:

(1) Rates of employment and unemployment;

(2) Wage rates;

(3) Duration of employment; and

(4) Employer satisfaction with performance of vocational education students as compared with performance of persons who have not had vocational education.

(d) The results of additional services, as measured by the suggested criteria under paragraphs (a), (b), and (c) of this section, that the State provides under the Act to these special populations:

(1) Women;

(2) Members of minority groups;

(3) Handicapped persons;

(4) Disadvantaged persons; and

(5) Persons of limited English-speaking ability.

(Implements sec. 112(b)(1); 20 U.S.C. 2312)

§ 400.403 Use of results of evaluation.

(a) The results of the evaluation shall be used as a basis to revise and improve the programs conducted under the approved five-year State plan.

(b) The State board shall make the results of the evaluations readily available to the State advisory council on vocational education.

(Sec. 112(b)(1)(A); 20 U.S.C. 2312)

§ 400.404 Special data on completers and leavers.

(a) The State shall evaluate, using wherever possible statistically valid sampling techniques, the effectiveness of each program of vocational education which purports to teach entry-level job skills.

(b) The State shall evaluate each of these programs in order to ascertain the extent to which both those students who complete a program and those students who leave before completing a program:

(1) Find employment in occupations related to their training; and

(2) Are considered by their employers to be well-trained and prepared for employment.

(Sec. 112(b)(1)(B); 20 U.S.C. 2312)

(c) The State shall use the following definitions for "program completer" and "program leaver":

(1) "Program completer" means a student who finishes a planned sequence of courses, services, or activities designed to meet an occupational objective and which purports to teach entry-level job skills; and

(2) "Program leaver" means a student who has been enrolled in and has attended a program of vocational education (which is part of a planned sequence of courses, services or activities designed to meet an occupational objective and which purports to teach entry-level job skills) and has left the program without completing it, except that no student shall be counted as a program leaver who is still enrolled in another program of vocational education. The "program leaver" includes:

(i) Persons who leave the program voluntarily before its formal completion because they have acquired sufficient entry-level job skills to work in the field, and who have taken a job related to their field of training; and

(ii) All other leavers.

(d) For the purposes of this section, a State shall report separately on program completers and program leavers in accordance with the survey instructions and sampling standards to be provided by the National Center for Educational Statistics, ED, as follows:

(1) Those who secure employment in the occupation for which they were trained or in occupations related to their vocational training, including the military;

(2) Those in paragraph (d)(1) of this section considered by their employers to be well trained and prepared for employment;

(Secs. 112(b)(1)(B), 161(a)(3)(B); 20 U.S.C. 2312, 2391)

(3) Those who are enrolled for additional education and training; and

(4) Those in none of the above categories.

(Implements secs. 112(b)(1)(B), 161(a)(3)(B); 20 U.S.C. 2312, 2391)

(e) Persons who are enrolled for additional education and training shall not be counted as "leavers" in the evaluation data.

(Secs. 112(b)(1)(B), 161(a)(3)(B); 20 U.S.C. 2312, 2391)

(f) The evaluation data on completers and leavers shall be collected at a date to be specified by the National Center for Educational Statistics, ED.

(Implements secs. 112(b)(1)(B), 161(a)(3)(B); 20 U.S.C. 2312, 2391)

§ 400.405 Assurance of compatible data.

In order to assure that the data on program completers and leavers are compatible and can be aggregated and reported for all of the States, each State shall utilize in its data collection and reporting the information elements and uniform definitions which are developed for the national vocational education data reporting and accounting system, as required by section 161 of the Act.

(Sec. 161(a)(3)(B); 20 U.S.C. 2391)

Subpart 2—Basic Grants

GENERAL PURPOSES

§ 400.501 Authorization of grants.

A state shall use its basic grant, which is equal to 80 percent of the funds allotted pursuant to section 102(a) of the Act, for the purposes set forth in § 400.502.

(Secs. 103(e), 120(a); 20 U.S.C. 2303, 2330)

§ 400.502 Use of funds under the basic grant.

(a) The State shall expend not less than $50,000 for each fiscal year from the funds available under the basic grant (section 120 of the Act) for the support of full-time personnel to perform the functions set forth in §§ 400.71 through 400.76.

(Sec. 104(b), 120(b)(1)(F); 20 U.S.C. 2304, 2330)

(b) The State shall expend not less than an amount of funds it deems necessary for each fiscal year from the funds available under the basic grant (section 120 of the Act) for special programs and placement services which are tailored to meet the needs of the group identified in § 400.621. The scope of these vocational education programs is described in § 400.622.

(Sec. 107(b)(4)(B); 20 U.S.C. 2307)

(c) The State may use the balance of the funds available under the basic grant (section 120 of the Act), in accordance with the approved five-year State plan and annual program plan, for any of the following purposes:

(1) Vocational education programs, described in § 400.511;

(2) Work-study programs, described in § 400.521;

(3) Cooperative vocational education programs, described in § 400.531;

(4) Energy education programs, described in § 400.541;

(5) Construction of area vocational education school facilities, described in § 400.551;

(6) Provision of stipends, described in § 400.571;

(7) Placement services for students who have successfully completed vocational education programs, described in § 400.581;

(8) Industrial arts programs, described in § 400.591;

(9) Support services for women, described in § 400.611;

(10) Day care services for children of students in secondary and postsecondary vocational education programs, described in § 400.611; and

(11) Construction and operation of residential vocational schools, described in § 400.631.

(12) Provision of vocational training through arrangements with private vocational training institutions or other existing institutions capable of carrying out vocational education programs, described in § 400.514;

(13) State administration of the five-year State plan and annual program plan, described in § 400.306; and

(14) Local supervision and administration of vocational education programs, services, and activities, described in § 400.307.

(Sec. 120(b); 20 U.S.C. 2330)

VOCATIONAL EDUCATION PROGRAMS

§ 400.511 Use of funds.

(a) A State may use funds under its basic grant (section 120 of the Act) for vocational education programs which are described in its approved five-year State plan and annual program plan.

(b) Vocational education programs mean "organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation (upgrading and retraining) for a career requiring other than a baccalaureate or advanced degree, and, for the purpose of this paragraph, the term 'organized education program' means only instruction related to the occupation or occupations for which the students are in training or instruction necessary for students to benefit from such training, and the acquisition, maintenance, and repair of instructional supplies, teaching aids, and equipment, and the term 'vocational education' does not mean the construction, acquisition or initial equipment of buildings, or the acquisition or rental of land."

(Secs. 120(b)(1)(A), 195(1); 20 U.S.C. 2330, 2461)

§ 400.512 Vocational instruction.

(a) For the purposes of these regulations, vocational instruction means instruction which is designed upon its completion to prepare individuals for employment in a specific occupation or a cluster of closely related occupations in an occupational field, and which is especially and particularly suited to the needs of those engaged in or preparing to engage in such occupation or occupations.

(b) Vocational instruction may include:

(1) Classroom instruction;

(2) Shop, laboratory, and classroom related field work;

(3) Programs providing occupational work experience, and related instructional aspects of apprenticeship programs subject to the provisions of § 400.515;

(4) Remedial programs which are designed to enable individuals, including persons of limited-English speaking ability, to profit from instruction related to the occupation or occupations for which they are being trained by correcting whatever educational deficiencies or handicaps prevent them from benefiting from such instruction; and

(5) Activities of vocational student organizations which are an integral part of the vocational instruction, subject to the provisions in § 400.513.

(c) Vocational instruction may be provided to either:

(1) Those preparing to enter an occupation upon the completion of the instruction; or

(2) Those who have already entered an occupation but desire to upgrade or update their occupational skills and knowledge in order to achieve stability or advancement in employment.

(Implements sec. 120(b)(1)(A); 20 U.S.C. 2330)

§ 400.513 Activities of vocational education student organizations.

(a) A State may use funds under its basic grant to support activities of vocational education student organizations which are described in its approved five-year State plan and annual program plan and which are:

(1) An integral part of the vocational instruction offered:

(2) Supervised by vocational education personnel who are qualified in the occupational area which the student organization represents; and

(3) Available to all students in the instructional program without regard

to membership in any student organization.

(b) An integral part of vocational instruction includes:

(1) Training in an organized educational program which is directly related to the preparation of individuals for paid or unpaid employment in a career requiring other than a baccalaureate or higher degree; or

(2) Field or laboratory work incident to the vocational training; or

(3) Development and acquisition of instructional materials, supplies, and equipment and instructional services.

(c) An integral part of vocational instruction does not include:

(1) Lodging, feeding, conveying, or furnishing transportation to conventions or other forms of social assemblage;

(2) Purchase of supplies, jackets, and other effects for students' personal ownership;

(3) Cost of no-instructional activities such as athletic, social, or recreational events;

(4) Printing and disseminating noninstructional newsletters;

(5) Purchase of awards for recognition of students, advisors, and other individuals; or

(6) Payment of membership dues.

(Implements sec. 120(b)(1); 20 U.S.C. 2330; 31 U.S.C. 551)

§ 400.514 Vocational instruction under contract.

(a) A State may make provision for any portion of the program of instruction on an individual or group basis by private (for profit or non-profit) vocational training institutions (subject to the requirements of paragraph (c) of this section) or other existing institutions capable of carrying out vocational programs through a written contract with the State board or local educational agency. The contract shall describe the portion of instruction to be provided by the institution and incorporate the standards and requirements of vocational instruction set forth in the regulations in this subpart and the approved five-year State plan.

(b) The contract for instruction shall be entered into only upon a determination by the State board or local educational agency that:

(1) The contract is in accordance with State and local law; and

(2) The instruction to be provided under contract will be conducted as a part of the vocational education program of the State and will constitute a reasonable and prudent use of funds available under the approved five-year State plan.

(c) The State board or local education agency may make arrangements with private (for profit or non-profit) vocational training institutions for the provision of vocational education where the State board or local educational agency determines:

(1) The private vocational training institution can make a significant contribution to attaining the objectives of the five-year State plan and can provide substantially equivalent training at a lesser cost; or

(2) The private vocational training institution can provide equipment or services not available in public institutions.

(d) The State board or local educational agency shall review the contracts with the institutions at least once a year.

(Implements Sec. 120(b)(1)(A); 20 U.S.C. 2330; Sen. Rept. 94-882, p. 67)

§ 400.515 Apprenticeship programs.

The five-year State plan may provide for related instruction for apprentices who are employed to learn skilled trades. If such programs of instruction are offered, the plan must set forth the following assurances:

(a) The vocational training is supplemental to the on-the-job training experience of the apprentice.

(b) The worker involved in the apprenticeable occupation must be at least 16 years of age, except where a higher minimum age standard is otherwise fixed by law.

(c) The apprentice training agreement must specify a given length of planned work experience training through employment on the job which is supplemented by related instruction.

(d) The skilled trade must possess all of the following characteristics:

(1) It is customarily learned in a practical way through training and work on the job;

(2) It is clearly identified and commonly recognized throughout an industry;

(3) It involves manual, mechanical, technical skills and knowledge; and

(4) It provides equal access to both sexes.

(e) Apprentices will be classified as follows:

(1) *Registered.* (i) Where the program or the apprentice, or both, are registered under the apprenticeship law of the State in which the apprentice is employed;

(ii) Where the program or the apprentice, or both, are registered by a State apprenticeship agency operating under powers vested in it by legally responsible State authority; and

(iii) Where the program or the apprentice, or both, are registered by the Bureau of Apprenticeship and Training, U.S. Department of Labor, under "standards" or "fundamentals" approved by the Federal Committee on Apprenticeship. Such registration or recognition exists only where neither conditions in paragraph (e)(1)(i) nor paragraph (e)(1)(ii) of this section exist.

(2) *Non-registered.* Where the program or the apprentice, or both, are not registered under any of the three conditions in paragraphs (e)(1)(i), (ii) and (iii) of this section, but a noncertifiable apprenticeship program is conducted under an implied or written agreement between the apprentice and an individual employer, a group of employees, employer-employee committees, or a governmental agency.

(3) The standards of apprenticeship programs must adhere to the requirements outlined in 29 CFR Part 29 (Department of Labor Apprenticeship Programs).

(29 U.S.C. 50)

WORK-STUDY PROGRAMS

§ 400.521 Use of funds.

A State may use funds under its basic grant (section 120 of the Act) for approved work-study programs, which are described in its approved five-year State plan and annual program plan.

(Sec. 120(b)(1)(B); 20 U.S.C 2330)

§ 400.522 Policy and procedure for work-study programs.

A State conducting work-study programs under § 400.521 shall set forth in the approved five-year State plan:

(a) An assurance that the State will adopt policies and procedures to insure that Federal funds used for this purpose will be expended solely for the payment or compensation of students employed pursuant to work-study programs which meet the requirements of § 400.523; and

(b) The principles for determining the priority to be accorded applications from local educational agencies for work-study programs. These principles shall give preference to applications submitted by local educational agencies serving communities having substantial numbers of youths who have dropped out of school or who are unemployed. Work-study programs shall be funded in the order determined by the application of these principles.

(Sec. 120(b)(1)(B), 121(b); 20 U.S.C. 2330, 2331)

§ 400.523 Requirements of work-study programs.

(a) Work-study programs shall be administrated by the local educational agency and shall be made reasonably available (to the extent of available funds) to all youths in the area served by the agency who are able to meet the requirements of paragraph (b) of this section.

(b) Work-study programs shall be furnished only to a student who:

(1) Has been accepted for enrollment as a full-time student in a vocational education program which meets the standards prescribed by the State board and the local educational agency for vocational education programs assisted under this Act, or in the case of a student already enrolled in such a program, is in good standing and in full-time attendance;

(2) Is in need of the earnings from such employment to commerce or continue the student's vocational education program; and

(3) Is at least 15 years of age and less than 21 years of age at the commencement of the student's employment, and is capable, in the opinion of the appropriate school authorities, of maintaining good standing in his or her vocational education program while employed under the work-study program.

(Sec. 121; 20 U.S.C. 2331)

(c) No student shall be employed under a work-study program for more than 20 hours in any week in which classes in which the student is enrolled are in session.

(Implements Sec. 121(a)(3); 20 U.S.C. 2331)

(d) No student employed under a work-study program shall be compensated at a rate which exceeds the hourly rate prevailing in the area for persons performing similar duties.

(e) Employment under these work-study programs shall be for the local educational agency or for some other public or nonprofit private agency or institution. Students employed in work-study programs assisted under the authority of this section shall not by reason of this employment be deemed employees of the United States, or their service Federal service, for any reason.

(f) In each fiscal year during which the work study program remains in effect, the local educational agency shall expend (from sources other than payments from Federal funds under this section) for the employment of its students (whether or not the employment is an area eligible for assistance under this section) an amount that is not less than its average annual expenditure for work-study programs of a similar character during the three fiscal years preceding the fiscal year in which its work-study program is approved.

(Sec. 121; 20 U.S.C. 2330, 2331)

COOPERATIVE VOCATIONAL EDUCATION PROGRAMS

§ 400.531 Use of funds.

(a) A State may use funds under its basic grant (section 120 of the Act) for grants to local educational agencies for establishing or expanding cooperative vocational education programs with the participation of public and private employers, when these programs are generally described in the approved five-year State plan and the annual program plan.

(b) The State, in its review of local applications, shall give priority for funding cooperative vocational education programs to local educational agencies in areas that have high rates of school dropouts or youth unemployment.

(Sec. 122 (a), (e); 20 U.S.C. 2332)

§ 400.532 Assurances in five-year State plan.

A State conducting cooperative vocational education programs under § 400.531 shall provide assurances in the approved five-year State plan that:

(a) Funds will be used only for developing and operating cooperative vocational education programs as defined in Appendix A and which provide training opportunities that may not otherwise be available and which are designed to serve persons who can benefit from these programs;

(b) Necessary procedures are established for cooperation with employment agencies, labor groups, employers, and other community agencies in identifying suitable jobs for persons who enroll in cooperative vocational education programs;

(c) Provision is made, where necessary, for reimbursement of added costs to employers for on-the-job training of students enrolled in cooperative programs, provided that the on-the-job training is related to existing career opportunities susceptible of promotion and advancement and which do not displace other workers who perform the work;

(Sec. 122; 20 U.S.C. 2332)

(d) The program provides cooperative on-the-job training that (1) employs and compensates student-learners in conformity with Federal, State, and local laws and regulations and in a manner not resulting in exploitation of the student-learner for private gain, and (2) is conducted in accordance with written training agreements between local educational agencies and employers;

(Implements Sec. 122(c); 20 U.S.C. 2332)

(e) Procedures are developed and published for use by local educational agencies for providing ancillary services and activities to assure that quality in cooperative vocational education programs is provided for and may include pre-service and in-service training for teacher coordinators, supervision, curriculum materials, travel for students and coordinators necessary to the success of such programs, and evaluation; and

(f) Policies and procedures will be adopted for accounting, for continuous evaluation of cooperative vocational education programs, and for follow-up of students who have completed or left these programs.

(Sec. 122; 20 U.S.C. 2332)

§ 400.533 Students in nonprofit private schools.

(a) A State using funds under its basic grant (section 120 of the Act) for grants to local educational agencies for cooperative vocational education programs shall consult with the appropriate nonprofit private schools.

(b) Each local educational agency receiving funds from the State for cooperative vocational education programs shall:

(1) Identify the students enrolled in nonprofit private schools in the area served by the local educational agency whose educational needs are of the type which the cooperative vocational education programs and services may benefit; and

(2) Assess adequately the needs of the students identified in paragraph (b)(1) of this section for the cooperative vocational education programs and services being offered; and

(3) Provide the students identified in paragraph (b)(1) of this section with the opportunity for cooperative vocational education programs and services in a manner which will most effectively meet the needs of these students.

(c) [Reserved]

(d) Cooperative vocational education programs carried out by local educational agencies which include students enrolled in nonprofit private schools may be supported up to 100 percent with Federal funds.

(e) Federal funds used to support cooperative vocational education programs which include students enrolled in nonprofit private schools will not be commingled with State or local funds so as to lose their identity. In developing policies and procedures, it shall not be necessary to require separate bank accounts for funds from Federal sources, so long as accounting methods will be established which assure that expenditures of the funds can be separately identified.

(Implements Sec. 122(f); H. Rept. 1085, p. 46; 20 U.S.C. 2332)

[42 FR 53828, Oct. 3, 1977, as amended at 45 FR 22530, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

ENERGY EDUCATION

§ 400.541 Use of funds.

A State may use funds under its basic grant (section 120 of the Act), when included in the approved five-year State plan and annual program plan, for grants to postsecondary institutions for energy education.

(Sec. 123; 20 U.S.C. 2333)

§ 400.542 Applications by postsecondary educational institutions.

(a) A State shall make a grant to a postsecondary educational institution only on application by the postsecondary educational institution to the State.

(b) The application shall describe with particularity a program for the training of miners, supervisors, and technicians (particularly safety personnel), and environmentalists in the field of coal mining and coal mining technology, including provision for supplementary demonstration projects or short-term seminars, which program may include curriculums such as:

(1) Extraction, preparation, and transportation of coals;

(2) Reclamation of coal mined land;

(3) Strengthening of health and safety programs for coal mine employees;

(4) Disposal of coal mine wastes; and

(5) Chemical and physical analysis of coal and materials, such as water

and soil, that are involved in the coal mining process.

(c) Postsecondary educational institutions may use funds for the acquisition of equipment necessary for the conduct of these programs.

(Sec. 123(a)(1)(2) (A) through (E); 20 U.S.C. 2333)

§ 400.543 Solar energy.

A State may also use funds under its basic grant (section 120 of the Act) to make grants to postsecondary educational institutions to carry out energy education programs for:

(a) Training of individuals needed for the installation of solar energy equipment; and

(b) Training necessary for the installation of:

(1) Glass paneled solar collectors;

(2) Wind energy generators; and

(3) Other related applications of solar energy.

(Sec. 123(b); 20 U.S.C. 2333)

CONSTRUCTION OF AREA VOCATIONAL EDUCATION SCHOOL FACILITIES

§ 400.551 Use of funds.

A State may use funds under its basic grant (section 120 of the Act) to pay costs of constructing area vocational education school facilities, in accordance with the approved five-year State plan and annual program plan.

(Sec. 120(b)(1)(E); 20 U.S.C. 2330)

§ 400.552 Types of facilities.

The State may use funds under the basic grant for construction if the facility meets one of the following requirements:

(a) A specialized high school used exclusively or principally for the provision of vocational education to persons who are available for study in preparation for entering the labor market; or

(b) The department of a high school exclusively or principally used for providing vocational education in no less than five different occupational fields to persons who are available for study in preparation for entering the labor market; or

(c) A technical or vocational school used exclusively or principally for the provision of vocational education to persons who have completed or left high school and who are available for study in preparation for entering the labor market, or

(d) The department or division of a junior college or community college or university operating under the policies of the State board which provides vocational education in no less than five different occupational fields, leading to immediate employment but not necessarily leading to a baccalaureate degree. These vocational education programs must:

(1) Be available to all residents of the State or an area of the State designated and approved by the State board; and

(2) In the case of a school, department, or division described in paragraph (c) or (d) of this section, admit as regular students both persons who have completed high school and persons who have left high school.

(Sec. 195(2); 20 U.S.C. 2461)

PROVISION OF STIPENDS

§ 400.571 Use of funds.

A State may use funds under its basic grant (section 120 of the Act), when included in the approved five-year State plan and annual program plan, for the provision of stipends for students entering or already enrolled in vocational education programs if these students have acute economic needs which cannot be met under work-study programs, subject to the restrictions in § 400.572.

(Sec. 120(b)(1)(G); 20 U.S.C. 2330)

§ 400.572 Restrictions on payment of stipends.

No funds shall be used for the payment of stipends to students entering or already enrolled in programs of vocational education unless the State board first makes a specific finding in each instance of funding that the funding of this particular activity is necessary due to:

(a) Inadequate funding in other programs providing similar activities; or

(b) Other services in the area that are inadequate to meet the needs.

(Sec. 120(b)(1)(G); 20 U.S.C. 2330)

§ 400.573 Application for payment of stipends by eligible recipients.

An eligible recipient desiring to provide stipends for eligible students under §§ 400.571 and 400.572 shall include a request for funds in the application submitted to the State board and shall provide in the application an assurance that each applicant to be approved meets the requirements of §§ 400.571 and 400.572.

(Sec. 120(b)(1)(G); 20 U.S.C. 2330)

§ 400.574 Rates for stipends.

Students entering or already enrolled in vocational education programs may be paid stipends at a rate not to exceed the higher of:

(a) The minimum wage prescribed by State or local law multiplied by the number of hours per week the student is enrolled in the vocational education program; or

(b) The minimum hourly wage set out under 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, multiplied by the number of hours per week the student is enrolled in the vocational education program.

(Implements Sec. 120(b)(1)(G); 29 CFR 95.34(c); 20 U.S.C. 2330)

PLACEMENT SERVICES FOR STUDENTS WHO HAVE SUCCESSFULY COMPLETED VOCATIONAL EDUCATION PROGRAMS

§ 400.581 Use of funds.

A State may use funds under its basic grant (section 120 of the Act), in accordance with the approved five-year State plan and annual program plan, for providing placement services for students who have successfully completed vocational education programs, subject to restrictions in § 400.582.

(Sec. 120(b)(1)(H); 20 U.S.C. 2330)

§ 400.582 Restrictions on placement services.

A State shall not use funds for placement services for students who have successfully completed vocational eduacation programs, unless the State board first makes a specific finding in each instance of funding that the funding of this particular activity is necessary due to:

(a) Inadequate funding in other programs providing similar activities; or

(b) Other services in the area that are inadequate to meet the needs. For example, if insufficient funds are available under Section 134(a)(3) for the placement of students successfully completing vocational education programs, the State may use funds under the basic grant for this purpose.

(Sec. 120(b)(2); 20 U.S.C. 2330)

§ 400.583 Application for funds by eligible recipients.

An eligible recipient desiring to provide placement services to students who have successfully completed vocational education programs under § 400.581 shall:

(a) Include the request for funds in the local application submitted to the State board; and

(b) Provide assurances that all placement services to be provided meet the requirements of § 400.582.

(Sec. 120(b)(1)(H); 20 U.S.C. 2330)

INDUSTRIAL ARTS

§ 400.591 Use of funds.

A State may use funds under its basic grant (section 120 of the Act), when included in the approved five-year State plan and annual program plan, for industrial arts programs which meet the requirements set forth in § 400.592.

(Sec. 120(b)(1)(I); 20 U.S.C. 2330)

§ 400.592 Industrial arts programs.

Industrial arts education programs which may be funded under § 400.591 are those industrial arts programs which are designed to meet the purposes of this Act (including the elimination of sex stereotyping) and which:

(a) Pertain to the body of related subject matter, or related courses, organized for the development of understanding about all aspects of industry and technology, including learning experiences involving activities such as experimenting, designating, constructing, evaluating, and using tools, machines, materials, and processes; and

(b) Assist individuals in making informed and meaningful occupational choices or which prepare them for entry into advanced trade and industrial or technical education programs.

(Sec. 195(15); 20 U.S.C. 2461)

SUPPORT SERVICES FOR WOMEN

§ 400.601 Use of funds.

A State may use funds under its basic grant (section 120 of the Act), when included in its approved five-year State plan and annual program plan, for support services for women who enter vocational education programs designed to prepare individuals for employment in jobs which have been traditionally limited to men.

(Sec. 120(b)(1)(J); 20 U.S.C. 2330)

§ 400.602 Types of support services.

Support services to be provided under § 400.601 include:

(a) *Counseling.* Counseling women entering and enrolled in non-traditional programs on the nature of these programs and on the ways of overcoming the difficulties which may be encountered by women in these programs. Counselors may furnish supportive services to assist students in adjusting to the new employment requirements.

(Implements Sec. 120(b)(1)(J); 20 U.S.C. 2330)

(b) *Job development.* Programs and activities in the area of job development include the provision of materials and information concerning the world of work which present women students entering, enrolled in, or interested in nontraditional programs the options, opportunities, and range of jobs available in these nontraditional fields. Job development support services may also be carried out through bringing persons employed in these nontraditional fields into the schools, as well as providing opportunities for women students to visit the work place of business and industry so as to afford them a clear understanding of the nature of the work, including an understanding of the work setting in which these jobs are performed.

(Implements Sec. 120(b)(1)(J); 20 U.S.C. 2330; H.R. Rept. No. 94-1085, pp. 23-25)

(c) *Job follow-up support.* Support services may be provided to assist women students in finding employment relevant to their training and interests. Follow-up services may be provided to assist students in the work force, and dealing with barriers which women face in working in these nontraditional areas.

(Implements Sec. 120(b)(1)(J); 20 U.S.C. 2330)

§ 400.603 Support to increase number of women instructors.

In funding programs and activities of support services for women, funds may be used to increase the number of women instructors involved in the training of individuals in programs which have traditionally enrolled mostly males, so as to provide supportive examples for these women who are preparing for jobs in these nontraditional areas of employment.

(Implements Sec. 120(b)(1)(J); 20 U.S.C. 2330; H.R. Rept. No. 1085, p. 24)

DAY CARE SERVICES FOR CHILDREN OF STUDENTS

§ 400.611 Use of funds.

A State may use funds under its basic grant (section 120 of the Act), when included in the approved five-year State plan and annual program plan, to provide day care services for children of students (both male and female and including single parents) in secondary and postsecondary vocational education programs.

(Sec. 120(b)(1)(K); 20 U.S.C. 2330)

§ 400.612 Day care services.

(a) Day care services shall be for the purpose of providing appropriate care and protection of infants, pre-school and school-age children in order to afford students who are parents the opportunity to participate in vocational education programs.

[42 FR 53828, Oct. 3, 1977, as amended at 45 FR 22530, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

VOCATIONAL EDUCATION PROGRAMS FOR DISPLACED HOMEMAKERS AND OTHER SPECIAL GROUPS

§ 400.621 Use of funds.

A State shall use funds under its basic grant (section 120 of the Act) in accordance with its approved five-year State plan and annual program plan to provide vocational education programs for the following special groups:

(a) Persons who had been homemakers but who now, because of dissolution of marriage, must seek employment;

(b) Persons who are single heads of households and who lack adequate job skills;

(c) Persons who are currently homemakers and part-time workers but who wish to secure a full-time job; and

(d) Women who are now in jobs which have been traditionally considered jobs for females and who wish to seek employment in job areas which have not been traditionally considered as job areas for females, and men who are now in jobs which have been traditionally considered jobs for males and who wish to seek employment in job areas which have not been traditionally considered as job areas for males.

(Secs. 107(b)(4)(B), 120(b)(1)(L); 20 U.S.C. 2307, 2330)

§ 400.622 Scope of programs.

The State shall fund programs, in accordance with the policies and procedures described in its approved five-year State plan pursuant to § 400.187(b), to assess and meet the needs of the groups described in § 400.621. These programs shall include:

(a) Organized educational programs necessary to prepare these special groups for employment, including the acquisition, maintenance and repair of instructional equipment;

(b) Special courses preparing these individuals in how to seek employment; and

(c) Provision of placement service for the graduate of these programs.

(Implements Sec. 120(b)(1)(L); 20 U.S.C. 2330)

CONSTRUCTION AND OPERATION OF RESIDENTIAL VOCATIONAL SCHOOLS

§ 400.631 Use of funds.

A State may use funds under its basic grant (section 120 of the Act) when included in its five-year State plan and annual program plan for the construction equipment, and operation of residential vocational schools, including room, board, and other necessities.

(Sec. 120(b)(1)(M); 20 U.S.C. 2330)

§ 400.632 Residential vocational schools.

A residential vocational school is an institution which provides vocational education for youths (males and females) who are at least 15 years of age and less than 21 years of age at the time of enrollment, and who need full-time study on a residential basis in order to benefit fully from the education. For the purposes of this section, institutions to which juveniles are assigned as a result of their delinquent conduct are not residential vocational schools. (This does not prohibit States from using funds under section 120 of the Act for the provision of vocational education programs in correctional institutions.)

(Sec. 124; 20 U.S.C. 2334)

§ 400.633 Special considerations for residential vocational schools.

(a) States shall give special consideration to the needs of large urban areas and isolated rural areas having substantial numbers of youths who have dropped out of school or who are unemployed.

(b) Funds may not be used for schools in which students are segregated because of race.

(Sec. 124(b); 20 U.S.C. 2334)

Subpart 3—Program Improvement and Supportive Services

§ 400.701 Authorization of grants.

A State shall use 20 percent of the funds allotted pursuant to section 102(a) of the Act for any of the following purposes, except as provided in § 400.762(a):

(a) Program improvement described in § 400.702;

(b) Vocational guidance and counseling described in § 400.761;

(c) Vocational education personnel training described in § 400.771;

(d) Grants to overcome sex bias and sex stereotyping described in § 400.791;

(e) State administration of the five-year State plan and annual program plan described in § 400.306; and

(f) Local supervision and administration of vocational education programs, services, and activities described in § 400.307.

(Secs. 103(e), 130; 20 U.S.C. 2303, 2350)

PROGRAM IMPROVEMENT

§ 400.702 Purpose.

The purpose of program improvement is to improve vocational education by the support of research programs, exemplary and innovative programs, and curriculum development programs.

(Sec. 130; 20 U.S.C. 2350)

§ 400.703 Research coordinating unit.

(a) In order to expend funds for program improvement, the State shall establish a research coordinating unit to coordinate the research, exemplary and innovative programs, and curriculum development activities in the State.

(b) The State shall set forth the organizational structure of this research coordinating unit in the five-year State plan.

(c) The State shall develop a comprehensive plan of program improvement which includes:

(1) The intended uses of funds available under section 130 of the Act to support activities of program improvement;

(2) A description of the State's priorities for program improvement; and

(3) The procedures to be used by the research coordinating unit to insure that the findings and results of the program improvement activities in the State are disseminated throughout the State in a coordinated fashion.

(d) The State shall include the comprehensive plan of program improvement in the five-year State plan and annual program plan.

(e) The research coordinating unit shall submit to the Secretary and to the National Center for Research in Vocational Education the following:

(1) Two copies of an abstract of each approved project for program improvement, within 30 calendar days after approval of the project, containing the source and amounts of funds obligated for the project; and

(2) Two copies of the final report resulting from the State project, within three months after the ending date of the project.

(f) The research coordinating unit may use funds available under section 130 of the Act for the purposes set forth in §§ 400.705, 400.706, and 400.708. This unit may contract for the performance of activities described in §§ 400.705, 400.706, and 400.708, or this unit may perform the activities set forth in § 400.705, using its own staff. The cost of the professional and support staff of the research coordinating unit is supportable with Federal funds available under section 130 of the Act.

(Implements Secs. 130, 131, 132, 133, 171; 20 U.S.C. 2350 through 2353, 2401; H.R. Rept. 94-1085, p. 44; H.R. Rept. 94-1701, pp. 225-226)

§ 400.704 Contract requirements.

No contract shall be made pursuant to §§ 400.705 and 400.708, unless the applicant can demonstrate a reasonable probability that the contract will result in improved teaching techniques or curriculum materials that will be used in a substantial number of classrooms or other learning situations within five years after the termination date of such contracts.

(Sec. 131(b), 133(b); 20 U.S.C. 2351, 2353)

§ 400.705 Use of funds for research programs.

A research coordinating unit may use funds available under section 130 of the Act directly or by contract for:

(a) Applied research and development in vocational education;

(b) Experimental, developmental, and pilot programs and projects designed to test the effectiveness of research findings, including programs and projects to overcome problems of sex bias and sex stereotyping;

(c) Improved curriculum materials for presently funded programs in vocational education and new curriculum materials for new and emerging job-fields, including a review and revision of any curricula developed under this section to insure that such curricula do not reflect stereotypes based on sex, race, or national origin;

(d) Projects in the development of new careers and occupations, such as:

(1) Research and experimental projects designed to identify new careers in such fields as mental and physical health, crime prevention and correction, welfare, education, municipal services, child care, and recreation, requiring less training than professional positions, and to delineate within such career roles with the potential for advancement from one level to another;

(2) Training and development projects designed to demonstrate improved methods of securing the involvement, cooperation, and commitment of both the public and private sectors toward the end of achieving greater coordination and more effective implementation of programs for the employment of persons in the fields described in paragraph (d)(1) of this section, including programs to prepare professionals (including administrators) to work effectively with aides; and

(3) Projects to evaluate the operation of programs for the training, development, and utilization of public service aides particularly their effectiveness in providing satisfactory work experiences and in meeting public needs.

(e) Dissemination of the results of the contracts made pursuant to paragraphs (a) through (d) of this section, as well as the results of other research projects, including employment of persons to act as disseminators on a local level, of these results.

(Sec. 131(a); 20 U.S.C. 2351)

§ 400.706 Use of funds for exemplary and innovative programs.

(a) The research coordinating unit may use funds available under section 130 of the Act directly or by contract for:

(1) Programs to develop high quality vocational education programs for urban centers with high concentrations of:

(i) Economically disadvantaged individuals;

(ii) Unskilled workers; and

(iii) Unemployed individuals.

(2) Programs to develop training opportunities for:

(i) Persons in sparsely populated rural areas; and

(ii) Individuals migrating from farms to urban areas.

(3) Programs of effective vocational education for persons of limited English-speaking ability;

(4) Establishment of cooperative arrangements between public education and manpower agencies, designed to correlate vocational education opportunities with current and projected needs of the labor market;

(5) Programs designed to broaden occupational aspirations and opportunities for youth, especially for youth who have academic, socioeconomic, or other handicaps. These programs include:

(i) Programs and projects to familiarize elementary and secondary students with the broad range of occupations for which special skills are required and the requisites for careers in those occupations; and

(ii) Programs and projects to facilitate the participation of employers and labor organizations in postsecondary vocational education; and

(6) Dissemination of the results of these contracts made under the authority of paragraphs (a) through (e) of this section, including employment of persons to act as disseminators, on a local level, of these results.

(Sec. 132(a); 20 U.S.C. 2352)

(b) Every contract made by a research coordinating unit for the purpose of funding exemplary and innovative projects shall:

(1) Give priority to programs and projects designed to reduce sex bias and sex stereotyping in vocational education;

(2) To the extent consistent with the number of students enrolled in private nonprofit schools in the area to be served, whose educational needs are of

the type which the program is designed to meet, make provision (in accordance with the requirements set forth in § 400.533) for the participation of these students in the programs; and also

(3) Provide that the Federal funds made available for exemplary and innovative programs to accommodate students in nonprofit private schools will not be commingled with State or local funds.

(Sec. 132(b); 20 U.S.C. 2352)

§ 400.707 Disposition of exemplary and innovative programs.

The State shall indicate in the annual program plan and accountability report covering the final year of financial support by the State for any exemplary and innovative program:

(a) The proposed disposition of the program when Federal support ends; and

(b) The means by which successful or promising programs will be continued and expanded within the State.

(Sec. 132(c); 20 U.S.C. 2352)

§ 400.708 Use of funds for curriculum development programs.

The research coordinating unit may use funds available under section 130 of the Act directly or by contract for:

(a) Development and dissemination of vocational education curriculum materials for new and changing occupational fields;

(b) Development and dissemination of vocational education curriculum materials for:

(1) Handicapped persons;

(2) Disadvantaged persons (other than handicapped persons);

(3) Persons of limited English-speaking ability;

(c) Development and dissemination of curriculum and guidance and testing materials designed to overcome sex bias and sex stereotyping in vocational educational programs;

(d) Support services designed to enable teachers to meet the needs of individuals enrolled in vocational education programs traditionally limited to members of the opposite sex; and

(e) Development and dissemination of other curriculum materials designed to improve the State's vocational education programs.

(Sec. 133(a); 20 U.S.C. 2353)

VOCATIONAL GUIDANCE AND COUNSELING

§ 400.761 Purpose.

The purpose of vocational guidance and counseling assistance is to improve the State's vocational education programs by providing support for vocational development guidance and counseling programs, services, and activities.

(Secs. 130(b)(4), 134(a); 20 U.S.C. 2350, 2354)

§ 400.762 Conformity with five-year State plan.

(a) A State shall use not less than 20 percent of the Federal funds available under section 130 of the Act to support vocational development guidance and counseling programs, services, and activities.

(b) The expenditure of funds for this purpose shall be in accordance with the approved five-year State plan and annual program plan.

(Sec. 134; 20 U.S.C. 2354; Sen. Rept. 94-882, p. 80)

§ 400.763 Kinds of programs, services, and activities.

Funds made available to a State under the vocational guidance and counseling program (section 134 of the Act) shall be used to support one or more of the following activities:

Guidance and counseling.

(a) Initiation, implementation, and improvement of high quality vocational guidance and counseling programs and activities;

(b) Vocational counseling for children, youth, and adults, leading to a greater understanding of educational and vocational options;

(c) Provision of educational and job placement programs and follow-up services for students in vocational education and for individuals preparing for professional occupations or occupations requiring a baccalaureate or higher degree. Follow-up services provided to baccalaureate or higher degree students shall be only for students enrolled on or after October 1, 1977;

(d) Vocational guidance and counseling training designed to acquaint guidance counselors with (1) changing work patterns of women, (2) ways of effectively overcoming occupational sex stereotyping, and (3) ways of assisting girls and women in selecting careers solely on their occupational needs and interests, and to develop improved career counseling materials which are free;

(e) Vocational and educational counseling for youth offenders and adults in correctional institutions;

(f) Vocational guidance and counseling for persons of limited English-speaking ability;

(g) Establishment of vocational resource centers to meet the special needs of out-of-school individuals, including individuals seeking second careers, individuals entering the job market late in life, handicapped individuals, individuals from economically depressed communities or areas, and early retirees; and

(h) Leadership for vocational guidance and exploration programs at the local level.

(Implements Sec. 134(a); 20 U.S.C. 2354; Sen. Rept. No. 95-142)

§ 400.764 Special emphasis.

Recipients of funds allocated by the State for programs, services, and activities listed in § 400.763 (a) or (b) shall use those funds, insofar as is practicable:

(a) To bring individuals with experience in business and industry, the professions, and other occupational pursuits into schools as counselors or advisors for students;

(b) To bring students into the work establishments of business and industry, the professions, and other occupations to acquaint students with the nature of work accomplished therein; and

(Sec. 134(b); 20 U.S.C. 2354)

(c) To enable guidance counselors to obtain experience in business and industry, the professions, and other occupational pursuits which will better enable those counselors to carry out their guidance and counseling duties.

(Sec. 134(b); 20 U.S.C. 2354; Conf. Rept. No. 94-1701, p. 225)

VOCATIONAL EDUCATION PERSONNEL TRAINING

§ 400.771 Purpose.

The purpose of vocational education personnel training is to improve the State's vocational education programs and the services which support those programs by improving the qualifications of persons serving or preparing to serve in vocational education programs.

(Sec. 135(a); 20 U.S.C. 2355)

§ 400.772 Conformity with five-year State plan.

(a) The State may use funds available under section 130 of the Act to support vocational education personnel training programs.

(Sec. 135(a); 20 U.S.C. 2355)

(b) In order to be eligible for support under section 130 of the Act, specific programs and projects of training must be in accord with the general plan for vocational education personnel training as set forth in the approved five-year State plan and annual program plan for vocational education.

(Sec. 130(b); 20 U.S.C. 2350)

§ 400.773 Eligible participants.

Training may be provided to persons serving or preparing to serve in vocational education programs, including teachers, administrators, supervisors, and vocational guidance and counseling personnel.

(Sec. 135(a); 20 U.S.C. 2355)

§ 400.774 Types of training.

Funds available to the State under section 130 of the Act may be used to support programs and projects designed to improve the qualifications of persons who are eligible under § 400.773, including (but not limited to) the following:

(a) Training or retraining for teachers, and supervisors and trainers of teachers, in vocational education in new and emerging occupations;

(b) In-service training for vocational education teachers and other staff members, to improve the quality of instruction, supervision, and administration of vocational education programs, and to overcome sex bias and sex stereotyping in vocational education programs;

(c) Provisions for exchange of vocational education teachers and other personnel with skilled workers or supervisors in business, industry, and agriculture (including mutual arrangements for preserving employment and retirement status and other employment benefits during the period of exchange), and the development and operation of cooperative programs involving periods of teaching in schools providing vocational education and of experience in commercial, industrial, or other public or private employment related to the subject matter taught in such schools;

(d) Training to prepare journeymen in the skilled trades or occupations for teaching positions;

(e) Training, including in-service training, for teachers and supervisors and trainers of teachers in vocational education to improve the quality of instruction, supervision, and administration of vocational education for persons who are disadvantaged, or handicapped, or who are of limited English-speaking ability, and to train or retrain counseling and guidance personnel to meet the special needs of these persons;

(f) Provision of short-term or regular-session institutes designed to improve the qualifications of persons entering or reentering the field of vocational education in new and emerging occupational areas in which there is a need for such personnel.

(Sec. 135(a); 20 U.S.C. 2355)

§ 400.775 Grants or contracts.

The State board may make grants or contracts, in accordance with its five-year State plan and annual program plan, in support of both training and retraining programs and projects to provide:

(a) Both pre-service and in-service education; and

(b) Both regular-session (academic year) institutes and short-term institutes.

(Sec. 135(a)(6), (b); 20 U.S.C. 2355)

§ 400.776 Stipends to trainees.

Within the limits set in paragraphs (c) through (f) of this section, the State board may, at its discretion, authorize payment of:

(a) Stipends to participating trainees in programs or projects supported under section 135 of the Act; and

(b) Allowances for other expenses for such trainees and their dependents.

(Sec. 135(b); 20 U.S.C. 2355)

(c) *Part-time and short-term training.* For part-time training and for short-term training (for periods not in excess of the equivalent of ten working days), the upper limits of stipends per participant are:

(1) Per hour of actual training, a sum not in excess of the average amount earned per hour of teaching by full-time classroom teachers in the State;

(2) Per full day of training, a sum not in excess of six times the rate per hour set in paragraph (c)(1) of this section; and

(3) Per five-day week of training, a sum not in excess of five times the rate per day set in paragraph (c)(2) of this section.

(d) *Full-time academic year or summer session.* The upper limits for stipends per participant for full-time training are:

(1) Per academic year of approximately nine months, a sum not in excess of $4,500; and

(2) Per summer session of at least six weeks, a sum not in excess of $900.

(e) *Other periods of full-time training.* For full-time training for periods of more than the equivalent of ten full days and less than six weeks, the stipend is limited to a sum calculated at a rate proportionate to $500 per calendar month.

(f) *Other allowances.* In addition to the sum allowable under authority of paragraphs (c), (d), and (e) of this section, the State may make payments only as follows:

(1) For the cost of participant travel to and from training sites, a participant is allowed the same per-mile rate for automobile travel as an employee of the State educational agency;

(2) For support of dependents of participants, a sum not in excess of:

(i) $675 per dependent for each academic year of full-time training; and

(ii) $170 per dependent for full-time training during a summer session of at least six weeks.

(Implements Sec. 135(b); 20 U.S.C. 2355)

GRANTS TO OVERCOME SEX BIAS AND SEX STEREOTYPING

§ 400.791 Purpose.

The purpose of grants under § 400.792 is to support activities which show promise of overcoming sex bias and sex stereotyping in vocational education.

(Secs. 130(b)(6), 136; 20 U.S.C. 2350, 2356)

§ 400.792 Conformity with five-year State plan.

(a) A State may use funds available under section 130 of the Act to support grants to overcome sex bias and sex stereotyping in vocational education programs.

(Sec. 136; 20 U.S.C. 2356)

(b) The expenditure of funds for this purpose shall be in accordance with the approved five-year State plan and annual program plan. The plans shall describe the types of projects to be funded.

(Sec. 130(b); 20 U.S.C. 2350)

§ 400.793 Types of projects.

Funds may be used for projects such as:

(a) Research projects on ways to overcome sex bias and sex stereotyping in vocational educational programs;

(b) Development of curriculum materials free of sex stereotyping;

(c) Development of criteria for use in determining whether curriculum materials are free from sex stereotyping;

(d) Examination of current curriculum materials to assure that they are free of sex stereotyping; and

(e) Training to acquaint guidance counselors, administrators, and teachers with ways of effectively overcoming sex bias and sex stereotyping, especially in assisting persons in selecting careers according to their interests and occupational needs rather than according to stereotypes.

(Implements Sec. 136; 20 U.S.C. 2356)

Subpart 4—Special Programs for the Disadvantaged

§ 400.801 Grants to States for special programs for the disadvantaged.

A State shall use the funds allocated to it from the separate authorization (section 102(b) of the Act) for special programs for the disadvantaged as defined in § 400.804 and Appendix A of these regulations.

(Sec. 140; 20 U.S.C. 2370)

§ 400.802 Use of funds.

(a) A State shall use the funds available under § 400.801, in accordance with the approved five-year State plan and annual program plan, for special programs of vocational education for disadvantaged persons in areas of high concentration of youth unemployment or school dropouts.

(b) A State shall use the funds under § 400.801 to pay up to 100 percent of the cost of special programs for disadvantaged persons.

(c) Funds available under § 400.801 may be used in addition to funds made available to the State for basic grants (section 120 of the Act): *Provided*, That the funds are used to conduct special programs of vocational education for the disadvantaged to enable them to succeed in vocational education programs.

(Sec. 140; 20 U.S.C. 2370)

§ 400.803 Students in nonprofit private schools.

A State may grant funds to eligible recipients only if:

(a) Provision (in accordance with the requirements set forth in § 400.533) has been made for the participation of students enrolled in nonprofit private schools in the area to be served whose educational needs are of the type which the program or projects involved is to meet, to the extent consistent with the number of such students; and

(Sec. 140(b)(2); 20 U.S.C. 2370)

[42 FR 53828, Oct. 3, 1977, as amended at 45 FR 22530, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 400.804 Criteria of need and eligibility.

(a) The term "disadvantaged" means persons (other than handicapped persons) who:

(1) Have academic or economic disadvantages; and

(2) Require special services, assistance, or programs in order to enable them to succeed in vocational education programs.

(Sec. 195(16); 20 U.S.C. 2461)

(b) "Academic disadvantage," for the purposes of this definition of "disadvantaged," means that a person:

(1) Lacks reading and writing skills;

(2) Lacks mathematical skills; or

(3) Performs below grade level.

(c) "Economic disadvantage," for the purposes of this definition of "disadvantaged," means:

(1) Family income is at or below national poverty level;

(2) Participant or parent(s) or guardian of the participant is unemployed;

(3) Participant or parent of participant is recipient of public assistance; or

(4) Participant is institutionalized or under State guardianship.

(Implements Sec. 140; 20 U.S.C. 2370)

(d) Eligibility for participation in the special programs supported under § 400.801 is limited to persons who (because of academic or economic disadvantage):

(1) Do not have, at the time of entrance into a vocational education program, the prerequisites for success in the program; or who

(2) Are enrolled in a vocational education program but require supportive services or special programs to enable them to meet the requirements for the program that are established by the State or the local educational agency.

(Implements Sec. 140; 20 U.S.C. 2370)

Subpart 5—Consumer and Homemaking Education

§ 400.901 Grants to States for consumer and homemaking education.

A State shall use the funds allotted to it from the separate authorization (section 102(c) of the Act) for programs of consumer and homemaking education.

(Sec. 150(a); 20 U.S.C. 2380)

§ 400.902 Use of funds.

A State shall use the funds available under section 150 of the Act, in accordance with its approved five-year State plan and annual program plan, solely for:

(a) Programs in consumer and homemaking; and

(b) Ancillary services in relation to programs under paragraph (a) of this section.

(Sec. 150(b); 20 U.S.C. 2380)

§ 400.903 Programs in consumer and homemaking education.

(a) Programs in consumer and homemaking education may be conducted at all educational levels (elementary, secondary, postsecondary or adult).

(b) Programs in consumer and homemaking education consist of instructional programs, services, and activities for the occupation of homemaking.

(c) Programs for the occupation of homemaking include (but are not limited to):

(1) Consumer education;

(2) Food and nutrition;

(3) Family living and parenthood education;

(4) Child development and guidance;

(5) Housing and home management (including resource management); and

(6) Clothing and textiles.

(Sec. 150(b); 20 U.S.C. 2380)

§ 400.904 Purpose of programs in consumer and homemaking education.

A State shall set forth in the five-year State plan and annual program plan the programs in consumer and homemaking education which it intends to support. Funds available under section 150 of the Act shall only be provided to support programs in consumer and homemaking education which:

(a) Encourage participation of both males and females to prepare for combining the roles of homemakers and wage earners;

(b) Encourage elimination of sex stereotyping by promoting the development of curriculum materials which deal with:

(1) Increased numbers of women working outside the home;

(2) Increased numbers of men assuming homemaking responsibilities;

(3) Changing career patterns of men and women; and

(4) Appropriate Federal and State laws relating to equal opportunity in education and employment;

(c) Give greater consideration to economic, social, and cultural conditions and needs, especially in economically depressed areas and, where appropriate, to bilingual instruction;

(d) Encourage eligible recipients to operate outreach programs in communities for youth and adults, giving consideration to their special needs, such as (but not limited to):

(1) The aged;

(2) Young children;

(3) School-age parents;

(4) Single parents;

(5) Handicapped persons;

(6) Educationally disadvantaged persons;

(7) Programs connected with health care delivery systems, such as providing parenthood education, nutrition education and consumer education; and

(8) Programs providing services for courts and correctional institutions, such as providing child development and guidance programs for short term court offenders;

(e) Prepare males and females who have entered or are preparing to enter into the work of the home; and

(f) Emphasize the following areas in order to meet current societal needs:

(1) Consumer education;

(2) Management of resources;

(3) Promotion of nutritional knowledge and food use; and

(4) Promotion of parenthood education.

(Sec. 150(b); 20 U.S.C. 2380)

§ 400.905 Ancillary services.

A State may use funds available under section 150 of the Act to provide ancillary services, activities, and other means of assuring quality in all consumer and homemaking education programs. These ancillary services may include (but are not limited to): (a) Teacher training; (b) teacher supervision; (c) curriculum development; (d) research; (e) program evaluation; (f) special demonstration and experimental programs; (g) development of instructional materials; (h) exemplary projects; (i) provision of equipment; (j) State administration and leadership; and (k) guidance and counseling.

(Implements sec. 150(b)(2); 20 U.S.C. 2380)

§ 400.906 Federal share.

(a) A State shall use funds appropriated under section 102(c) of the Act for section 150 of the Act to pay up to 50 percent of the cost of (1) programs in consumer and homemaking education under §§ 400.903 and 400.904 and (2) ancillary services and activities under § 400.905.

(b) A State shall use at least one-third of the funds available as stated in paragraph (a) of this section, to pay up to 90 percent of the cost of programs in economically depressed areas or areas with high rates of unemployment for program designed to:

(1) Assist consumers; (2) help improve home environments; and (3) help improve the quality of family life.

(Sec. 150(c), (d); 20 U.S.C. 2380)

PART 408—SECRETARY'S DISCRETIONARY PROGRAMS OF VOCATIONAL EDUCATION

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AUTHORITY: Secs. 101-195 of Title II of Pub. L. 94-482 as further amended by Pub. L. 95-40 (20 U.S.C. 2301 to 2461), unless otherwise noted.

SOURCE: 42 FR 53852, Oct. 3, 1977, unless otherwise noted. Redesignated at 45 FR 86301, Dec. 30, 1980; 46 FR 3207, Jan. 14, 1981.

GENERAL

§ 408.1 Scope.

Part 408 contains regulations interpreting or implementing Part B (entitled "National Programs") of Title I of the Vocational Education Act of 1963, as amended by section 202 of Title II of the Education Amendments of 1976, Pub. L. 94-482 (referred to as "the Act"). Part 408 also contains regulations interpreting or implementing the Secretary's discretionary program of contracts with Indian tribes contained in section 103(a)(1)(B) of the Act.

(Sec. 103(a)(1)(B); Secs. 171 through 195; 20 U.S.C. 2303, 2401 et seq.)

§ 408.2 Purpose.

The purpose of Part 408 is to set forth the regulations which govern the Secretary's discretionary programs of grants and contracts for vocational education.

(Secs. 171 through 195; 20 U.S.C. 2401 et seq.)

§ 408.3 Definitions.

The definitions common to all parts of the Act are contained in section 195 of the Act. These definitions and additional definitions necessary for the State vocational education programs are set forth in Appendix A of Part 408. Definitions necessary only for Part 408 are set forth in this Part 408 in the subparts in which they apply.

(Sec. 195; 20 U.S.C. 2461)

§ 408.4 Regulations that apply to the Secretary's Discretionary Programs of Vocational Education.

(a) *Regulations.* The following regulations apply to the Secretary's Discretionary Programs of Vocational Education.

(1) (i) For Subparts 1, 2, 4, and 5—the Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and Part 77 (Definitions).

(ii) For Subpart 3—EDGAR 34 CFR Part 77 only.

(2) The regulations in this Part 408.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Department" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Department programs; and

(2) Applying for assistance under a Department program.

(20 U.S.C. 1221e-3(a)(1))

[45 FR 22530, Apr. 3, 1980. Redesignated at 45 FR 86301, Dec. 30, 1980; 46 FR 3207, Jan. 14, 1981]

Subpart 1—Program Improvement

§ 408.101 Purpose.

The purpose of program improvement is to support projects for the improvement of vocational education and a national center for research in vocational education as authorized in section 171 of the Act. Funds available to the Secretary for program improvement under section 103 of the Act will be used primarily for contracts and in some cases for grants.

(Secs. 103, 171; 20 U.S.C. 2303, 2401)

§ 408.102 National center for research in vocational education.

(a) The Secretary will support a national center for research in vocational education. The center (a nonprofit agency) will be chosen once every five years. The Secretary will appoint an advisory committee to assist the center. The center shall have such research locations, including contracts with one or more regional research centers, as shall be determined by the Secretary after consultation with the national center and its advisory committee taking into consideration the vocational education research resources available, geographical area to be served, and the schools, programs, projects, and students and areas to be served by research activities.

(b) The center shall directly or through other public agencies:

(1) Conduct applied research and development on problems of national significance in vocational education;

(2) Provide leadership development through an advanced study center and in-service education activities for State and local leaders in vocation education;

(3) Disseminate the results of research and development projects funded by the center;

(4) Develop and provide information to facilitate national planning and policy development in vocational education;

(5) Act as a clearinghouse for information on projects supported by the States and the Secretary and compile an annotated bibliography of research, exemplary and innovative projects,

and curriculum development projects assisted with funds made available under this Act since July 1, 1970; and

(6) Work with States, local educational agencies, and other public agencies in developing methods of evaluating programs, including the follow-up studies of program completers and leavers required by section 112 of the Act, so that these agencies can offer job training programs which are more closely related to the types of jobs available in their communities, regions, and States.

(Sec. 171(a)(2); 20 U.S.C. 2401)

§ 408.103 Armed services curriculum materials.

The Secretary will make contracts to convert to use in local educational agencies, private nonprofit schools, and other public agencies curriculum materials involving job preparation which have been prepared for use by the armed services of the United States.

(Sec. 171(b)(3); 20 U.S.C. 2401)

§ 408.104 Authorized activities.

(a) The Secretary will support projects of national significance for improvement of vocational education. The projects include the following activities as authorized in sections 131 through 136 of the Act:

(1) Research (section 131 of the Act);

(2) Exemplary and innovative programs (section 132 of the Act);

(3) Curriculum development (section 133 of the Act);

(4) Vocational guidance and counseling (section 134 of the Act);

(5) Vocational education personnel training (section 135 of the Act); and

(6) Grants to assist in overcoming sex bias and sex stereotyping (section 136 of the Act).

(b) Functions under the above may include: Applied research and development; experimental and pilot programs; curriculum revision and development; demonstration, dissemination, and utilization of research and development products; personnel training; and evaluation.

(Secs. 131 through 136, 171(a)(1); 20 U.S.C. 2351-56, 2401)

§ 408.105 Eligible applicants.

(a) Eligible applicants for project support include:

(1) Public organizations, institutions, and agencies;

(2) Nonprofit and profit-making private organizations, institutions, and agencies; and

(3) Individuals.

(b) Profit-making private organizations, institutions, and agencies, and individuals are eligible for contracts only.

(c) Eligible applicants for the national center for research in vocational education include nonprofit agencies only.

(Interprets Sec. 171; 20 U.S.C. 2401)

§§ 408.106—408.107 [Reserved]

§ 408.108 Improved teaching techniques or curriculum materials.

The Secretary will not make a grant pursuant to § 408.104 unless the applicant can demonstrate a reasonable probability that the grant will result in improved teaching techniques or curriculum materials that will be used in a substantial number of classrooms or other learning situations within five years after the termination date of the grant.

(Sec. 171(b)(1); 20 U.S.C. 2401)

§ 408.109 Exemplary and innovative projects.

(a) (1) The Secretary makes a contract for an exemplary and innovative project only if the project provides for the participation of students enrolled in nonprofit private schools, to the extent that the educational needs of those students is of the type that the project is to meet.

(2) Section 75.680 of the EDGAR references the regulations that govern the participation of those students.

(b) The contract shall provide that the Federal funds will not be commingled with State or local funds.

(Sec. 171(b)(2); 20 U.S.C. 2401)

[42 FR 53828, Oct. 3, 1977, as amended at 45 FR 22530, Apr. 3, 1980. Redesignated at 45 FR 86301, Dec. 30, 1980; 46 FR 3207, Jan. 14, 1981]

§ 408.110 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new awards. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (Maximum 34 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (Maximum 8 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of is nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (Maximum 7 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (Maximum 7 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

CROSS-REFERENCE: 34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (Maximum 3 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *National need.* (Maximum 15 points). The need section clearly—

(1) Describes the national need in vocational education for the proposed project;

(2) Indicates specifically who or what will be helped; and

(3) Describes the problem rather than symptoms of the problem.

(g) *Literature review.* (Maximum 5 points). The literature review is sufficiently comprehensive to—

(1) Establish the basis for the problem;

(2) Describe the problem in contrast to the symptoms of the problem;

(3) Provide a strong conceptual framework for the proposed objectives and proposed plan, including the general design and specific procedures of the proposed plan, along with the management, evaluation, dissemination, and training procedures, when appropriate; and

(4) Describe what has been done previously to alleviate the problem and point out the gaps that will be alleviated by this specific proposed work.

(h) *Results, end products, outcomes, and dissemination.* (Maximum 9 points). The application clearly describes:

(1) What will be delivered to the government.

(2) The format in which the results, products, or outcomes will be delivered to the government.

(i) *Institutional capability and commitment.* (Maximum 4 points). The application provides adequate evidence of—

(1) Institutional or individual's experience and commitment to the proposed work; and

(2) Assurance of support from cooperating agencies, local educational agencies, postsecondary institutions, business, industry, and labor, where applicable for successful implementation of the project.

(j) *Sex bias and stereotyping.* (Maximum 8 points). The application provides appropriate plans to eliminate sex bias and stereotyping in the proposed results, end products, and outcomes, and the proposed dissemination plans.

(20 U.S.C. 2401)

[46 FR 5382, Jan. 19, 1981]

§ 408.111 Additional application review factors.

In addition to the criteria listed in § 408.110, the Secretary may utilize factors such as the following in making decisions regarding whether to fund applications:

(a) Duplication of effort; (b) duplication of funding; and (c) evidence that an applicant has not performed satisfactorily on previous projects.

(Implements Sec. 171; 20 U.S.C. 2401)

Subpart 2—Indian Tribes

CONTRACT PROGRAM FOR INDIAN TRIBES AND INDIAN ORGANIZATIONS

§ 408.201 Purpose.

The purpose of the program for Indian tribes and Indian organizations is for the Secretary, at the request of an Indian tribe, to make a contract or contracts directly with Indian tribal organizations, with funds available under section 103(a)(1) of the Act, to plan, conduct, and administer programs, or portions thereof, which are authorized by and consistent with the Act, particularly section 103(a)(1)(B)(iii) of the Act.

(Sec. 103(a)(1); 20 U.S.C. 2303)

§ 408.202 Applicability of the Indian Self-Determination Act of 1975.

(a) Any contract entered into under this subpart is subject to the provisions of sections 4, 5, 6, 7(b) and 102 of the "Indian Self-Determination and Education Assistance Act of 1975," Pub. L. 93-638.

(b) Regulations implementing the above sections of the Indian Self-Determination and Education Assistance Act, Title 25 of the Code of Federal Regulations, §§ 271.44, 271.46, 271.47, and 271.50 are applicable to the extent that they are relevant and practicable.

(c) Whenever the term "Secretary of the Interior" is used, in the Indian Self-Determination and Education Assistance Act, the term means, for the purposes of this subpart, "Secretary."

(Sec. 103(a)(1)(B)(iii); 20 U.S.C. 2303; 25 U.S.C. 450a, et seq.)

§ 408.203 Definitions.

(a) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaskan native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

(b) "Tribal organization" means the recognized governing body of any Indian tribe or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by the organization and which includes the maximum participation of Indians in all phases of its activities.

(25 U.S.C. 450b)

§ 408.204 Competitive awards.

The Secretary makes awards competitively except to the extent that appropriate sections of the Indian Self-Determination and Education Assistance Act of 1975 apply or to the extent that more specific regulations in this subpart apply.

(Sec. 103(a)(1)(B)(iii); 20 U.S.C. 2303; 25 U.S.C. 450e(b))

[45 FR 22530, Apr. 3, 1980. Redesignated at 45 FR 86301, Dec. 30, 1980; 46 FR 3207, Jan. 14, 1981]

§ 408.205 Eligible applicants.

An Indian tribal organization of an Indian tribe which is eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination and Education Assistance Act of 1975 or under the Act of April 16, 1934, is eligible for assistance contracts.

(Sec. 103(a)(1)(B)(iii); 20 U.S.C. 2303; 25 U.S.C. 450f)

§ 408.206 Applications for assistance contracts.

An application from an eligible tribal organization must be submitted to the Secretary by the Indian tribe. An application which serves more than one Indian tribe shall be approved by each tribe to be served in the application.

(Sec. 103(a)(1)(B)(iii); Pub. L. 93-638; 20 U.S.C. 2303; 25 U.S.C. 450b(c))

[42 FR 53828, Oct. 3, 1977, as amended at 45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 86301, Dec. 30, 1980; 46 FR 3207, Jan. 14, 1981]

§ 408.207 Review for duplication of effort.

An applicant shall submit a copy of the application directly to the Secretary of the Bureau of Indian Affairs and the State board at the same time it submits an application to the Department in order to avoid duplication of funding.

(Implements Sec. 103(a)(1)(B)(iii); 20 U.S.C. 2303)

§ 408.208 No cost sharing.

No cost sharing by the applicant is required.

(Implements Sec. 103(a)(1)(B)(iii); 20 U.S.C. 2303)

§§ 408.209—408.210 [Reserved]

§ 408.211 Technical review criteria.

The following criteria will be utilized in reviewing applications. These criteria are consistent with 45 CFR 100a.26(b), Review of Applications, in the General Provisions for Department Programs. A segment or segments of an application should address each criterion. Each criterion is weighted and includes the maximum score that can be given to an application in relation to the criterion. The maximum aggregate score for the criteria is 100 points, and the maximum weight for each criterion is listed below in parentheses. Points will be awarded to the extent that evidence in the application satisfies each criterion. The review of these criteria shall constitute the basis for the Secretary to enter or decline to enter into a contract with an eligible applicant. If the review of any application results in no recommendation to fund (where funds are available), this will mean that it is not satisfactory, as that term is used in the Indian Self-Determination Act (section 102). Applications must receive a minimum of 30 points to be considered for funding.

(25 U.S.C. 450f)

(a) *Program improvement.* (Maximum 15 points.) The application focuses on the improvement of occupational training opportunities for Indians and delineates the way in which the proposed program will contribute to improved programs for the specific target group.

(b) *Need.* (Maximum 10 points.) The need section clearly:

(1) Describes the need for the proposed activity; (2) provides specific evidence of the need; (3) indicates specifically how the need will be met; and (4) describes, where appropriate, ongoing and planned activities in the community relative to the need.

(c) *Objectives.* (Maximum 10 points.) The objectives:

(1) Relate to the need; (2) are significant for vocational education; (3) clearly describe proposed program outcomes; (4) are capable of being attained; and (5) are measurable.

(d) *Plan.* (Maximum 15 points.) The plan clearly describes the way in which the objectives will be accomplished by: (1) The overall design for the proposed program; and

(2) The use of specific procedures to implement activities designed to accomplish each objective of each segment of the proposed program;

(3) A description of: (i) Specific activities to be conducted in the proposed program;

(ii) Instruments to be used in the proposed program;

(iii) Instructional material to be used in the proposed program, if appropriate; and

(iv) Population to be served in the proposed program; and

(4) Statistical and analytical procedures, if appropriate.

(e) *Management plan.* (Maximum 10 points.) The management plan adequately describes the way in which personnel and resources will be utilized to accomplish each objective, the overall design, and each major procedure.

(f) *Evaluation plan.* (Maximum 10 points.) The plan includes valid and reliable instruments and procedures for assessing and documenting the impact of project results in terms of the achievement of project goals and objectives.

(g) *Applicant's staff competencies and experience.* (Maximum 10 points.) Points will be awarded on the extent to which the application clearly describes:

(1) The competencies that are required for the proposed project;

(2) The names and qualifications (including project management qualifications) of the project director, key professional staff, advisory groups, and any consultants;

(3) Time commitments planned for the project by the project director, key staff, advisory groups, and any consultants;

(4) Evidence of past and successful experience of the proposed project director and key staff members in similar or related projects;

(5) Evidence of commitment to section 7(b) of the Indian Self-Determination and Education Assistance Act.

(h) *Budget and cost effectiveness.* (Maximum 10 points.) Points will be awarded on the extent to which the application provides a justifiable and itemized statement of cost which contains line items in the proposed budget and appears to be cost effective with respect to proposed results.

(i) *Institutional capability and commitment.* (Maximum 10 points.) The application provides adequate evidence of:

(1) Institutional experience and commitment to the proposed work;

(2) Appropriate facilities and equipment; and

(3) Documented assurances of support from cooperating local educational agencies, postsecondary institutions, business, industry, or labor, if support from any of these groups is necessary for successful implementation of the project.

(Implements Sec. 103(a)(1)(B)(iii); 20 U.S.C. 2303; 25 U.S.C. 450f)

§ 408.212 Additional factors for declining to contract.

In addition to the weighted technical review criteria listed in § 408.211, the Secretary may use any of the factors listed below in making a decision whether to decline to enter into a contract with an eligible applicant:

(a) The program duplicates an effort already being made;

(b) Funding the program would create an inequitable distribution among tribes; or

(c) The applicant has not performed satisfactorily under a previous Department Award.

(Implements Sec. 103(a)(1)(B)(iii); 20 U.S.C. 2303; 25 U.S.C. 450f)

§ 408.213 Hearing by the Secretary after declining to enter into a contract.

After receiving notice from the Secretary that the Department will not award a contract to an eligible applicant, the tribal organization or the tribe shall have 30 calendar days to request a hearing, in writing, to review the Secretary's decision.

(25 U.S.C. 450f)

§ 408.214 Remaining funds.

From any remaining funds reserved for this subpart, the Secretary is authorized to enter into an agreement with the Secretary of the Bureau of Indian Affairs for the operation of vocational education programs authorized by this Act in institutions serving Indians as described in section 103(a)(B)(i) of the Act. The Secretary of the Interior is authorized to receive funds for that purpose.

(Sec. 103(a)(1)(B)(iii); 20 U.S.C. 2303)

Subpart 3—Training and Development Programs for Vocational Education Personnel

LEADERSHIP DEVELOPMENT AWARD PROGRAM

§ 408.301 Purpose.

The purpose of the leadership development award program is to provide opportunities for experienced vocational educators to spend full time in advanced study of vocational education.

(Sec. 172(a)(1); 20 U.S.C. 2402)

§ 408.302 Leadership development awards.

(a) *Awards.* The Secretary will make leadership development awards to qualified vocational education personnel (such as administrators, supervisors, teacher educators, researchers, guidance and counseling personnel, and instructors in vocational education) for graduate training in an approved vocational education leadership development program of an approved institution of higher education.

(Sec. 172(b)(1), (3); 20 U.S.C. 2402)

(b) *Award period.* Leadership development awards will be made for a period not to exceed 36 months.

(Sec. 172(b)(2)(A); 20 U.S.C. 2402)

§ 408.303 Equitable geographical distribution.

In order to meet the needs for qualified vocational educational personnel in all the States, the Secretary, without using a pre-determined formula for allocation among the States, but after applications have been reviewed and scored on their merits, will make leadership development awards in an equitable manner among the States. The Secretary will take into account such factors as:

(a) The State's vocational education enrollments; and

(b) The incidence of youth unemployment and school dropouts in the State.

(Sec. 172(b)(4); 20 U.S.C. 2402)

§ 408.304 Eligibility of individuals.

(a) A person is eligible to receive a leadership development award if such person:

(1) Has had not less than two years of experience in vocational education or in business or industrial training or military technical training, or in the case of researchers, experience in social science research which is applicable to vocational education; and

(2) Is currently employed or is reasonably assured of employment in vocational education and has successfully completed, as a minimum, a baccalaureate degree program; and

(3) Is recommended by his or her employer, or others, as having leadership potential in the field of vocational education and is eligible for admission as a graduate student to a program of higher education approved by the Secretary under § 408.311.

(b) In order to receive a leadership development award the person selected shall enroll for full-time graduate study in a vocational education leadership development program approved under § 408.311.

(Sec. 172(b)(1), (5); 20 U.S.C. 2402)

§ 408.305 Application procedures.

(a) *Submission of applications.* Any eligible individual who wishes to receive a leadership development award shall submit an application to the Secretary and send one copy of the application to the State board for vocational education for the State in which the applicant is a resident.

(b) *Role of the State board.* The State board, with advice from the State advisory council, from other agencies involved in State planning and reporting, and from representatives of vocational education programs in institutions of higher education, will:

(1) Review the application;

(2) Collect advice as to the merits of each application from the other agencies and the representatives noted in this paragraph;

(3) Advise the Secretary as to the merits of each application; and

(4) Forward all applications and statements of advice to the Secretary for review and decision by the Secretary.

(Implements Sec. 172(a)(1); 20 U.S.C. 2402; H.R. Rept. No. 94-1085, pp. 54-55)

§ 408.306 Stipends to individuals.

(a) *Academic year.* Each person awarded a leadership development award is entitled to receive a stipend of:

(1) $4,500 for each academic year of full-time study at the institution of higher education; and

(2) $675 for each academic year for each dependent.

(b) *Summer session.* An additional stipend may be awarded of:

(1) $900 for full-time summer study at the same institution of higher education; and

(2) $170 for this period for each dependent.

(Implements Sec. 172(b)(2)(A); 20 U.S.C. 2402)

§ 408.307 Conditions for continued eligibility.

(a) *Satisfactory participation.* A recipient of an award may continue to receive payments under § 408.306 only during such periods as the Secretary finds that the recipient:

(1) Is maintaining satisfactory proficiency in study or research in the field of vocational education in an institution of higher education;

(2) Is devoting essentially full time to such study or research; and

(3) Is not engaging in gainful employment, other than part-time employment in teaching, research, or similar activities endorsed by that institution and approved by the Secretary.

(Sec. 172(b)(5); 20 U.S.C. 2402; H.R. Rept. No. 94-1085, pp. 55-56)

(b) *Employment limitation.* The limitation with respect to employment set forth in paragraph (a)(3) of this section does not apply to the period of time between an academic year and a summer session (or between academic years if a stipend is not received under § 408.306(b) for full-time study.)

(Implements Sec. 172(b)(5); 20 U.S.C. 2402)

§ 408.308 Payment conditioned on appropriation.

Leadership development award payments under § 408.306 after the first year of the award period (in case of awards made for a period exceeding twelve months) are subject to the continued availability of Federal funds under section 172 of the Act.

(Interprets Sec. 172; 20 U.S.C. 2402)

§ 408.309 Technical review criteria.

The Secretary will use the following criteria in reviewing applications. The criteria in 45 CFR 100a.26(b) do not apply to this program. A segment or segments of an application should address each criterion. Each criterion is weighted and includes the maximum score that can be given to an application in relation to the criteria. The maximum score for the critiera is 100 points, and the maximum weight for each criterion is listed below. An application must receive a minimum of 50 points to be considered for funding.

(a) *Academic ability.* (Maximum 30 points.) The applicant provides evidence of his or her academic ability. This must include:

(1) Transcripts of grades earned in college, including graduate courses; and may include (2) scores earned on the Graduate Record Examination, Miller Test of Analogies, or similar tests; and (3) results earned on specific skill aptitude test.

(b) *Leadership potential.* (Maximum 20 points). The applicant provides evidence of leadership potential. This may include awards or recognition received for:

(1) Professional service; (2) community activities; (3) work with advisory committees; (4) volunteer work; (5) outstanding skill in interpersonal relations; and (6) other activities as appropriate.

(c) *Managerial skills.* (Maximum 15 points) The applicant provides information concerning his or her experience in a managerial or administrative capacity. This may include evidence of the applicant's ability in: (1) Planning; (2) problem solving; (3) decision making; and (4) other skills, where appropriate.

(d) *Communication skills.* (Maximum 20 points.) The applicant provides evidence of experience in activities requiring oral and written language skills. This may include:

(1) Public speaking experience to professional, commuity, or other groups;

(2) Articles published in professional or popular journals; and

(3) Other written materials such as reports, abstracts, and instructional materials.

(e) *National need.* (Maximum 15 points.) The degree to which the applicant's goals, objectives, and aspirations in vocational education relate to national needs in vocational education, including developing expertise to serve: (1) disadvantaged persons; (2) members of minority groups, and (3) handicapped persons

(H.R. Rept. No 94-1085, p. 55)

(f) [Reserved]

(g) *Additional criteria.* In addition to the criteria listed above the Secretary will consider the following factors:

(1) Equitable distribution among males and females; (2) geographical distribution; (3) membership in minority groups.

(Implements Sec. 172(a)(1); 20 U.S.C. 2402; U.S.C. 2402; H.R. Rept. No. 94-1085, p. 55)

§ 408.310 Assignment to approved institution.

Each applicant for an award shall identify a first, second, and third choice of institutions (approved under § 408.311) he or she desires to attend. The Secretary reserves the right to redistribute award recipients among approved institutions in order to assure that each institution will have a sufficient number of awardees to assure the effectiveness of the program of vocational leadership development.

(Implements Sec. 172(a)(1), 20 U.S.C 2402; H.R. Rept. No. 94-1085, p. 55)

§ 408.311 Institutional eligibility and approval.

Upon receipt of an application from an institution of higher education requesting approval of its vocational education leadership development program, the Secretary will approve the program only upon finding that:

(a) The institution offers a comprehensive program in vocational education with adequate supporting services and disciplines, such as education administration, guidance and counseling, research, and curriculum development, including:

(Sec. 172(b)(3)(A); 20 U.S.C. 2402)

(1) Training in those leadership skills necessary to increase the participation of disadvantaged and under represented persons such as the handicapped, disadvantaged minorities, and women, in vocational education programs at all levels;

(Sec. 101(1); 20 U.S.C. 2301; H.R. Rept No. 94-1085, p. 55)

(2) Resources and supporting services for at least five of the generally recognized fields of vocational educa-

tion, integrated into a comprehensive approach to vocational education;

(3) Practical experience and internship components; and

(Implements Sec. 172(b)(3)(A); 20 U.S.C. 2402)

(4) A focus on familiarizing the individual with new curriculum materials in vocational education.

(Sec. 172(b)(7); 20 U.S.C. 2402)

(b) The program under paragraph (a) of this section is designed to further substantiate the objective of improving vocational education by providing opportunities for graduate training for vocational education teachers, supervisors, guidance and counseling personnel, and administrators, and of university level vocational education teacher educators and researchers.

(c) The program is conducted by a school of graduate study.

(Interprets Sec. 172(b)(3)(B); 20 U.S.C. 2402)

§ 408.312 Institutional allowance.

(a) The Secretary will (in addition to the stipend paid to an award recipient under § 408.306) pay an institutional allowance to the institution of higher education in which the recipient is pursuing a course of study, in the amount of $3,200 per participant, per academic year, with an additional $800 per participant for full-time study during the summer sessions.

(b) The institutional allowance is made in lieu of tuition and all non-refundable fees and deposits that would otherwise be required of the student.

(c) Any portion of the institutional allowance in excess of normal tuition, non-refundable fees, and deposits attributable to the awardee shall be used by the institution to improve the program of vocational education leadership development in that institution.

(Implements Sec. 172(b)(2)(B); 20 U.S.C. 2402)

VOCATIONAL EDUCATION CERTIFICATION FELLOWSHIP PROGRAM

§ 408.431 Purpose.

The purpose of the vocational education certification fellowships is to provide opportunities for:

(a) Certified teachers who have been trained to teach in other fields to become vocational educators if those teachers have skills and experience in vocational fields for which there is a need for vocational teachers and for which they can be trained to be vocational educators; and

(Sec. 172(a)(2); 20 U.S.C. 2402)

(b) Persons in industry, business, and agriculture who have skills and experience in vocational fields for which there is need for vocational educators (but who do not necessarily have baccalaureate degrees) to become vocational educators.

(Interprets Sec. 172(a)(3); 20 U.S.C. 2402)

§ 408.432 Awards to two categories of fellows.

The Secretary is authorized to award fellowships to two categories of persons for undergraduate study in institutions of higher education:

(a) Persons who are or have been certified by a State as teachers in elementary and secondary schools, community and junior colleges, and other thirteenth and fourteenth year programs within the ten-year period prior to the current closing date for applications under this program and who:

(1) Have or have had skills and experience in vocational fields for which there is a need for vocational teachers and for which they can be trained to be vocational educators; and

(2) Are unable to find employment in their field of previous training.

(Sec. 172(c)(1), (c)(1)(A); 20 U.S.C. 2402)

(b) Persons (not necessarily baccalaureate degree holders) employed in industry, business, or agriculture who:

(1) Have skills and experience in vocational fields in which there is a need for vocational educators; and

(2) Have been accepted by a teacher training institution for enrollment in a program which will assist them in becoming vocational educators.

(Sec. 172(c)(1)(B); 20 U.S.C. 2402)

§ 408.433 Fellowship period.

Fellowships will be made for periods not to exceed 24 months.

(Sec. 172(c)(2)(A); 20 U.S.C. 2402)

§ 408.434 Application procedures.

(a) *Submission of applications.* Any eligible individual who wishes to receive a vocational education certification fellowship shall submit an application to the Secretary and send one copy of the application to the State board for vocational education for the State in which the applicant is a resident.

(b) *Role of the State board.* The State board, with advice from the State advisory council, from other agencies involved in State planning and reporting, and from representatives of vocational education programs in institutions of higher education will:

(1) Review the applications;

(2) Collect advice as to the merits of each application;

(3) Advise the Secretary as to the merits of each application; and

(4) Forward all applications and statements of advice to the Secretary for review and decision by the Secretary.

(Implements Sec. 172(c)(1); 20 U.S.C. 2402; H.R. Rept. No. 94-1085, p. 54)

§ 408.435 Equitable geographical distribution.

In order to meet the needs for qualified vocational education personnel in all the States, the Secretary, without using any pre-determined formula for allocation among the States, but after applications have been reviewed and scored on their merits will make certification fellowship awards in an equitable manner among the States, taking into account such factors as:

(a) The State's vocational education enrollment; and

(b) The incidence of youth unemployment and school dropouts in the State.

(Sec. 172(c)(4); 20 U.S.C. 2402)

§ 408.436 Stipend to fellows.

(a) *Academic year.* Each person awarded a fellowship is entitled to receive a stipend of:

(1) $4500 for each academic year of full-time study at the institution of higher education to which that person is assigned for the fellowship period; and

(2) $675 for each academic year for each dependent.

(b) *Summer session.* An additional stipend may be awarded of:

(1) $900 for full-time summer study at the same institution of higher education; and

(2) $170 for this period for each dependent.

(Implements Sec. 172(c)(2)(A); 20 U.S.C. 2402)

§ 408.437 Conditions for continued eligibility.

(a) *Satisfactory participation.* A recipient of a fellowship may continue to receive payment under § 408.436 only during such period as the Secretary finds that the recipient:

(1) Is maintaining satisfactory proficiency in study or research in the field of vocational education in an institution of higher education;

(2) Is devoting essentially full time to such study or research; and

(3) Is not engaging in gainful employment other than part-time employmemt in teaching, research, or similar activities endorsed by that institution and approved by the Secretary.

(Implements Sec. 172(c)(5); 20 U.S.C. 2402; H.R. Rept. No. 94-1085, pp. 55-56)

(b) *Employment limitations.* The limitation with respect to employment set forth in paragraph (a)(3) of this section does not apply to the period of time between an academic year and a summer session, or between academic years if a stipend is not received under § 408.436(b) for full-time summer study.

(Interprets Sec. 172(c)(5); 20 U.S.C. 2402)

§ 408.438 Payment conditioned on appropriation.

Fellowship payments under § 408.436 after the first year of the fellowship period (in case of awards made for a period exceeding twelve months) are subject to the continued availability of Federal funds under section 172 of the Act.

(Interprets Sec. 172; 20 U.S.C. 2402)

§ 408.439 Institutional allowance.

(a) The Secretary will (in addition to the stipends paid to a fellowship recipient under § 408.436) pay an institutional allowance to the institution of higher education at which the recipient is pursuing his or her course of study in an amount of $2,000 per participant per academic year, with an additional $500 per participant for full-time study during the summer session;

(b) The institutional allowance is made in lieu of tuition and all non-refundable fees and deposits that would otherwise be required of the fellow; and

(c) Any portion of the institutional allowance in excess of the normal tuition, non-refundable fees, and deposits attributable to the fellow shall be used by the institution to improve the program of vocational education in that institution.

(Implements Sec. 172(c)(2)(B); 20 U.S.C. 2402)

§ 408.440 Institutional eligibility and approval.

The Secretary will approve the vocational education fellowship program of an institution of higher education only upon finding that:

(a) The program is capable of enabling unemployed certified teachers or persons from business, industry, or agriculture to become certified vocational education teachers;

(Interprets Sec. 172(c)(1)(B); 20 U.S.C. 2402)

(b) The institution offers a program in vocational education which is sufficiently comprehensive to meet, at the undergraduate level, the requirements for certification of the applicant in the State where the institution is located;

(c) In the case of applicants seeking certification in a particular area of study designated by the Secretary as being in need of additional personnel, the institution is capable of preparing students for certification in that particular area;

(Implements Sec. 172(c)(7); 20 U.S.C. 2402)

(d) The fellow will receive education and training of the same type as that offered by the institution to undergraduate students preparing to become vocational education teachers; and

(e) The undergraduate program in vocational education includes adequate support services and disciplines, such as education administration, guidance and counseling, special education for the handicapped, research, and curriculum development.

(Implements Sec. 172(c)(3); 20 U.S.C. 2402)

§ 408.441 Teaching fields in need of additional teachers.

The Secretary will publish, before the beginning of each fiscal year, a listing of the areas of teaching in vocational education where there are or will be shortages of personnel and will, to the maximum degree possible, award fellowships under § 408.432 to applicants seeking to become teachers in the areas identified.

(Sec. 172(c)(7); 20 U.S.C. 2402)

§ 408.442 Content of applications.

(a) *For certified teachers.* Each certified teacher applicant shall provide in his or her application evidence of:

(1) Certification as a teacher in an elementary or secondary school or junior or community college of other thirteenth and fourteenth grade program within the ten-year period prior to the current closing date for applications under this program; and

(2) Past or current skills and experiences in the vocational field(s) in which there is a need for additional educators and for which he or she seeks training as a vocational educator; and

(3) Inability to find employment in his or her field of previous certification.

(b) *For applicants not certified as teachers.* Each applicant who has not been a certified teacher shall provide in his or her application evidence of:

(1) The nature and duration of his or her employment in business, agriculture, or industry; and

(Interprets Sec. 172(c)(1)(B); 20 U.S.C. 2402)

(2) Having skills and experiences in one of the vocational areas where vocational educators are needed.

(Sec. 172(c)(1)(B); 20 U.S.C. 2402)

(c) *Assurance by the institution.* The institution of higher education designated in the application for a fellowship shall provide in that application an assurance that the:

(1) Applicant has been accepted for enrollment in the program of vocational education designated in the application; and the

(2) Institution meets the requirements for institutional eligibility set forth in paragraphs (a) through (e) of § 408.440.

(Implements Sec. 172(c)(3); 20 U.S.C. 2402)

§ 408.443 Technical review criteria.

The Secretary will use the following criteria in reviewing formally transmitted applications. The criteria in 45 CFR 100a.26(b) do not apply to this program. A segment or segments of an application should address each criterion. Each criterion is weighted and includes the maximum score that can be given to an application in relation to the criteria. The maximum score for the criteria is 100 points, and the maximum weight for each criterion is listed below. An application must receive a minimum of 50 points to be considered for funding.

(a) *Academic ability.* (Maximum 25 points.) The applicant provides evidence of his or her level of academic achievement and academic ability. This may include:

(1) Transcripts of grades earned in secondary school and, where appropriate, college; (2) results earned on specific skill aptitude tests; and (3) results of other tests, where appropriate.

(b) *Vocational skills.* (Maximum 35 points.) The applicant provides evidence of his or her performance in a work situation requiring vocational skills. This may include:

(1) Letters of recommendations of previous employers or others, as appropriate; (2) results of National Occupational Competency Testing Institute, where appropriate; (3) certificates or diplomas, as appropriate; and (4) work related experience, including teaching, where appropriate.

(c) *Communication skills.* (Maximum 15 points.) The applicant provides evidence of experience in activities requiring oral and written language skills. This may include:

(1) Public speaking experience to professional, community, or other groups:

(2) Articles published in newspapers, professional or popular journals; and

(3) Other written materials such as reports, abstracts, or other materials, where appropriate.

(d) *Human relations skills.* (Maximum 15 points.) The applicant presents evidence of skills in interpersonal relations. This may include experience with:

(1) Professional groups; (2) community groups; (3) volunteer groups; (4) work related organizations; (5) members of minority groups, the disadvantaged, and handicapped persons; and (6) other groups, as appropriate.

(e) *National need.* (Maximum 10 points.) The applicant describes in writing his or her goals, objectives, and aspirations in vocational education and their relationship to national needs in vocational education with particular reference to the elimination of sex stereotyping and working with the following populations: (1) Disadvantaged persons; (2) members of minority groups; and (3) handicapped persons.

(H.R. Rept. No. 94-1085, p. 55)

(f) *Additional factors.* In addition to the criteria listed above, the Secretary will consider the following factors:

(1) Equitable distribution among males and females; (2) geographical distribution; (3) membership in minority groups; and (4) the applicant's intention to become certified in a vocational field not traditionally open to persons of the applicant's sex, or to become certified in a new field or one not commonly taught.

(Implements Sec. 101(3), 172(b)(4); 20 U.S.C. 2301, 2402; H.R. Rept. No. 94-1085, p. 55)

Subpart 4—Emergency Assistance for Remodeling and Renovating of Vocational Education Facilities

§ 408.501 Purpose.

The purpose of this program is to provide emergency assistance to local educational agencies in urban and rural areas which are unable to provide vocational education designed to meet today's manpower needs due to the age of their vocational education facilities or the obsolete nature of the equipment used for vocational training. The purpose is to assist those local educational agencies in the modernization of facilities or equipment and the conversion of academic facilities necessary to assure that the facilities will be able to offer vocational education programs which give reasonable promise of employment.

(Sec. 191; 20 U.S.C. 2441)

§ 408.502 Eligible applicants.

(a) Any local educational agency in an urban or rural area is an eligible applicant.

(Sec. 193(a); 20 U.S.C. 2443)

(b) "Rural area" means an area which is not included within a Standard Metropolitan Area (as defined by the U.S. Bureau of Census) and which is not within or coterminous with, a city, town, borough, or village, or other subcounty political unit, the population of which exceeds 2,500.

(c) "Urban area" means an area within a city, town, or borough with a population of over 100,000.

(Implements Sec. 198(a); 20 U.S.C. 2443)

§ 408.503 Content of applications.

An application for a grant or assistance contract shall set forth:

(a) A description of the facility to be remodeled or renovated, including:

(1) The date of completion of construction of the facility (or the part of the facility to be remodeled or renovated);

(2) The extent of remodeling or renovation necessary to enable the facility to provide a modern program of vocational education;

(b) A description of the equipment to be replaced or modernized and reference to the particular purpose for which the equipment will be used;

(c) A description of the extent to which the modernization or conversion of facilities and equipment will be consistent with, and further the goals of, the five-year State plan, including the elimination of sex and racial bias and sex stereotyping in vocational education programs;

(d) The financial ability of the local educational agency to undertake the modernization without Federal assistance;

(Implements Sec. 193(a) (1)-(4); 20 U.S.C. 2443)

(e) Assurance that the facility to be remodeled or renovated will meet standards adopted pursuant to the Architectural Barriers Act;

(Sec. 193(a)(5); 20 U.SC. 2443; 42 U.S.C. 4151-4156)

(f) The extent of State and local funds available to match Federal funds together with the sources and amounts of the funds;

(g) Such other information as the State board determines to be appropriate.

(Sec. 193(a) (6), (7); 20 U.S.C. 2443)

(h) The reasons why renovation or remodeling rather than replacement is planned or why some other facility is not available;

(i) The cost of each major item of renovation or remodeling; and

(j) Facts showing that renovation or remodeling is cost effective.

(Implements Sec. 193(a)(8); 20 U.S.C. 2443)

§ 408.504 Submission of applications through the State board.

An applicant shall send the application to the Secretary through the State board.

(Sec. 193(a); 20 U.S.C. 2443)

§ 408.505 Technical review criteria.

(a) The Secretary will rank all applicants according to their relative need for assistance.

(Sec. 193(C); 20 U.S.C. 2443)

(b) The relative need for assistance will be determined by the following criteria (total 100 points):

(1) The age or obsolesence of the facilities and equipment for which assistance is sought (maximum 17 points);

(2) The rate of youth unemployment in the labor market area served by the local educational agency (maximum 12 points);

(3) The number of youth aged seventeen through twenty-one residing in the labor market area served by the local educational agency who are unemployed (maximum 12 points);

(4) The percentage such youth represent, as compared with the vocational education enrollment in the local educational agency (maximum 12 points);

(5) The ability of the facility to comply with the standards adopted pursuant to the Architectural Barriers Act (maximum 5 points);

(Sec. 193(b)(1) (A) through (E); 20 U.S.C. 2443; 42 U.S.C. 4151 through 4156)

(6) The need for the proposed facilities or equipment in relation to the employment needs of the State or labor market area (maximum 12 points);

(7) Adequacy of the proposed facilities or equipment for the training or educational requirements of the specific vocational training program(s) to be accommodated by the proposed facilities or equipment (in terms of linedrawings and educational specifications) (maximum 10 points);

(8) Evidence that the proposed renovation or remodeling or equipment is economical and is not elaborate or extravagant (maximum 5 points);

(9) Evidence that the planned renovation or remodeling is a more cost effective approach than replacement (maximum 5 points); and

(10) Evidence that the local educational agency does not have the financial ability to undertake the proposed project without Federal assistance, and the ability of the State education agency and the local education agency to match proposed Federal funds (maximum 10 points).

(Implements Sec. 192(b)(1); 20 U.S.C. 2442)

(c) In approving applications, the Secretary will consider the degree to which the modernization of facilities and equipment proposed in the application affords promise of achieving the goals set forth in the approved five-year State plan.

(Sec. 193(b)(2); 20 U.S.C. 2443)

§ 408.506 Payments to local educational agencies.

(a) The Secretary will pay 75 percent (except as noted in paragraph (b)) of the cost of approved applications in the order they are ranked under § 408.505(b).

(Sec. 193(c); 20 U.S.C. 2443)

(b) The Secretary may waive the 75 percent limit and may pay up to the full cost of the project upon the Secretary's finding, in writing, that a local educational agency with an approved application is suffering from extreme financial need and cannot, because of the 75 percent limit, participate in the program.

(Sec. 193(e); 20 U.S.C. 2443)

[42 FR 53828, Oct. 3, 1977, as amended at 45 FR 22530, Apr. 3, 1980. Redesignated at 45 FR 86301, Dec. 30, 1980; 46 FR 3207, Jan. 14, 1981]

APPENDIX A

DEFINITIONS

"Act" means the Vocational Education Act of 1963, Pub. L. 88-210, as amendment by Title II of the Education Amendments of 1976, Pub. L. 94-482, 90 Stat. 2168, 20 U.S.C. 2301 et seq.

(Secs. 101-195, 20 U.S.C. 2301 et seq.)

"Administration" means activities of a State or an eligible recipient necessary for the proper and efficient performance of its duties under the Act, including supervision, but not including ancillary services.

(Sec. 195(20); 20 U.S.C. 2461)

"Adult program" means (for reporting purposes) vocational education for persons who have already entered the labor market or who are unemployed or who have completed or left high school and who are not described in the definition of "postsecondary program."

(Sec. 110(c); 20 U.S.C. 2461)

"Ancillary services" means activities which contribute to the enhancement of quality in vocational education programs, including activities such as teacher training and curriculum development, but excluding administration (except in consumer and homemaking education under Section 150 of the Act.)

(Implements Sec. 195(20); 20 U.S.C. 2461)

"Area vocational education school" means:

(a) A specialized high school used exclusively or principally for the provision of vocational education to persons who are available for study in preparation for entering the labor market;

(b) The department of a high school exclusively or principally used for providing vocational education in no less than five different occupational fields to persons who are available for study in preparation for entering the labor market; or

(c) A technical or vocational school used exclusively or principally for the provision of vocational education to persons who have completed or left high school and who are available for study in preparation for entering the labor market; or

(d) The department or division of a junior college or community college or university operating under the policies of the State board which provides vocational education in no less that five different occupational fields, leading to immmediate employment but not necessarily leading to a baccalaureate degree, if:

(1) The vocational programs are available to all residents of the State or an area of the State designated and approved by the State board; and

(2) In the case of a school, department, or division decribed in (c) or (d), it admits as regular students both persons who have completed high school and persons who have left high school.

(Sec. 195(2); 20 U.S.C. 2461)

"CETA" means the Comprehensive Employment and Training Act of 1973, Pub. L. 93-23, 87 Stat. 839, as amended.

"Construction" includes:

(a) Construction of new buildings;

(b) Acquisition, expansion, remodeling, and alteration of existing buildings;

(c) Site grading and improvement; and

(d) Architect fees.

(Sec. 195(4); 20 U.S.C. 2461)

"Cooperative education" means a program of vocational education for persons who, through written cooperative arrangements between the school and employers, receive instruction, including required academic courses and related vocational instruction by alternation of study in school with a job in any occupational field, but these two experiences must be planned and supervised by the school and employers so that each contributes to the student's education and to his or her employability. Work periods and school attendance may be on alternate half days, full days, weeks, or other periods of time in fulfilling the cooperative program.

(Sec. 195(18); 20 U.S.C. 2461)

"Curriculum materials" means materials:

(a) Covering instruction in a course or series of courses in any occupational field; and

(b) Designed to prepare persons for employment at the entry level; or

(c) Designed to upgrade occupational competencies of those previously or presently employed in any occupational field.

(Sec. 195(19); 20 U.S.C. 2461)

"Disadvantaged" means:

(a) Persons (other than handicapped persons) who:

(1) Have academic or economic disadvantages; and

(2) Require special services, assistance, or programs in order to enable them to succeed in vocational education programs.

(Sec. 195(16); 20 U.S.C. 2461)

(b) "Academic disadvantage," for the purposes of this definition of "disadvantaged," means that a person:

(1) Lacks reading and writing skills;

(2) Lacks mathematical skills; or

(3) Performs below grade level.

(c) "Economic disadvantage," for the purposes of this definition of "disadvantaged," means:

(1) Family income is at or below national poverty level;

(2) Participant or parent(s) or guardian of the participant is unemployed;

(3) Participant or parent of participant is recipient of public assistance; or

(4) Participant is institutionalized or under State guardianship.

(Interprets Sec. 195(16); 20 U.S.C. 2461)

"Eligible recipient" means:

(a) A local educational agency, or

(b) A postsecondary educational institution.

(Sec. 195(13); 20 U.S.C. 2461)

"Financial ability," as used in section 106(a)(5)(B)(i) of the Act means the property wealth per capita of local school districts and of other public agencies having a tax base or the total tax effort of the area served by these schools and agencies as that effort is a percentage of the income per capita of those within the taxing body.

(Implements Sec. 106(a)(5)(B)(i); 20 U.S.C. 2306; H. Rept. No. 94-1085, p. 34)

"Handicapped" means:

(a) A person who is:

(1) Mentally retarded;

(2) Hard of hearing;

(3) Deaf;

(4) Speech impaired;

(5) Visually handicapped;

(6) Seriously emotionally disturbed;

(7) Orthopedically impaired; or

(8) Other health impaired person, or persons with specific learning disabilities; and

(b) Who, by reason of the above:

(1) Requires special education and related services, and

(2) Cannot succeed in the regular vocational education program without special educational assistance; or

(3) Requires a modified vocational education program.

(Sec. 195(7); Sec. 602(1) of the Education of Handicapped Act; 20 U.S.C. 2461; 20 U.S.C. 4001)

"High school program" means vocational education for persons in grades 9 through 12.

(Implements Sec. 101; 20 U.S.C. 2461)

"Industrial arts education programs" means those education programs:

(a) Which pertain to the body of related subject matter, or related courses, organized for the development or understanding about all aspects of industry and technology, including learning experiences involving activities such as experimenting, designing, constructing, evaluating, and using tools, machines, materials, and processes; and

(b) Which assist individuals in making informed and meaningful coccupational choices or which prepare them for entry into advanced trade and industrial or technical education programs.

(Sec. 195(15); 20 U.S.C. 2461)

"Institution of higher education" means institution of higher education as defined in section 1201(a) of the Higher Education Act.

(Sec. 1201(a) of the Higher Education Act, 20 U.S.C. 1141(a))

"Limited English-speaking ability" when used in reference to an individual means:

(a) Individuals who were not born in the United States or whose native tongue is a language other than English, and

(b) Individuals who came from environments where a language other than English is dominant, and by reasons thereof, have difficulties speaking and understanding instruction in the English language.

(20 U.S.C. 880b-1)

"Low-income family or individual" means families or individuals who are determined to be low-income according to the latest available data for the Department of Commerce.

(Sec. 195(17); 20 U.S.C. 2461)

"National Advisory Council" (NACVE) means the previously existing National Advisory Council on Vocational Education which is continued by section 162 of the Act.

(Sec. 195(14); 20 U.S.C. 2461)

"Postsecondary educational institution" means a nonprofit institution legally authorized to provide postsecondary education within a State for persons sixteen years of age or older, who have graduated from or left elementary or secondary school.

(Sec. 195(12); 20 U.S.C. 2461)

"Postsecondary program" means (for reporting purposes) vocational education for persons who have completed or left high school and who are enrolled in organized programs of study for which credit is given toward an associate or other degree, but which programs are not designed as baccalaureate or higher degree programs.

(Sec. 110(c); 20 U.S.C. 2310)

"Private vocational training institution" means a business or trade school, or technical institution or other technical or vocational school, in any State, which (a) admits as regular students only persons who have completed or left elementary or secondary school and who have the ability to benefit from the training offered by such institution; (b) is legally authorized to provide, and provides within that State, a program of postsecondary vocational or technical education designed to fit individuals for useful employment in recognized occupations; (c) has been in existence for two years or has been specially accredited by the Secretary as an institution meeting the other requirements of this subsection; and (d) is accredited (1) by a nationally recognized accrediting agency or association listed by the Secretary pursuant to this clause, or (2) if the Secretary determines that there is no nationally recognized accrediting agency or association qualified to accredit schools of a particular category, by a State agency listed by the Secretary pursuant to this clause, or (3) if the Secretary determines that there is no nationally recognized or State agency or association qualified to accredit schools of a particular category, by an advisory committee appointed by him and composed of persons specially qualified to evaluate training provided by schools of that category, which committee shall prescribe the standards of content, scope, and quality which must be met by those schools and shall also determine whether particular schools meet those standards. For the purposes of this paragraph, the Secretary shall publish a list of nationally recognized accrediting agencies or associations and State agencies which he determines to be reliable authority as to the quality of education or training afforded." (Pub. L. 95-40; 20 U.S.C. 2461 (21).)

"School facilities" means:

(a) Classrooms and related facilities (including initial equipment) and interests in lands on which such facilities are constructed.

(b) "School facilities" does not include any facility intended primarily for events for which admission is to be charged to the general public.

(Sec. 195(3); 20 U.S.C. 2461)

"Secondary program" means vocational education for persons in secondary grades as defined by State laws.

(Implements Sec. 101; 20 U.S.C. 2301)

"State board" means the State board designated or created by State law as the sole State agency responsible for:

(a) The administration of vocational education; or

(b) Supervision of the administration of vocational education in the State.

(Sec. 195(9); 20 U.S.C. 2461)

"Vocational education" means organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree; for purposes of this paragraph, the term "organized education program" means only:

(a) Instruction related to the occupation or occupations for which the students are in training or instruction necessary for students to benefit from such training; and

(b) The acquisition, maintenance, and repair of instructional supplies, teaching aids and equipment.

The term "vocational education" does not mean the construction, acquisition, or initial equipment of buildings, or the acquisition or rental of land.

(Sec. 195(1); 20 U.S.C. 2461)

"Vocational instruction" means instruction which is designed to prepare individuals upon its completion for employment in a specific occupation or cluster of closely related occupations in an occupational field, and which is especially and particularly suited to the needs of those engaged in or preparing to engage in such occupation or occupations. Such instruction may include:

(a) Classroom instruction;

(b) Classroom related field, shop, and laboratory work;

(c) Programs providing occupational work experiences and related instructional aspects of apprenticeship programs;

(d) Remedial programs which are designed to enable individuals to profit from instruction related to the occupation or occupations for which they are being trained by correcting what ever educational deficiencies or handicaps prevent them from benefiting from such instruction; and

(e) Activities of vocational student organizations which are an integral part of the vocational instruction, subject to the provisions in § 104.513.

(Implements Secs. 120(b)(1)(A); 195(1); 20 U.S.C. 2330, 2461)

[42 FR 53852, Oct. 3, 1977; 43 FR 3909, Jan. 30, 1978, as amended at 45 FR 22530, Apr. 3, 1980. Redesignated at 45 FR 86301, Dec. 30, 1980; 46 FR 3207, Jan. 14, 1981]

APPENDIX B

QUESTIONS AND ANSWERS

Many specific questions were raised by interested persons with respect to the implementation of the Act. Some of these issues raise important policy considerations and have legal significance. Recognizing that the goal of a uniform position on these issues can best be achieved through publication in the FEDERAL REGISTER, the Secretary has decided to issue the following questions and answers as supplementary information to the regulation.

Question No. 1: To what part of the Act does the section 106(a)(5) funding formula apply?

Answer: The section 106(a)(5) funding formula must be applied to all Federal funds distributed under sections 120, 134, 140 and 150. In addition, certain parts of the Act impose other special funding criteria, priorities, and conditions which must be considered. For example, both the work study program (section 121) and cooperative vocational education program (section 122) require that priority in funding be given to areas of high youth dropouts or youth unemployment.

Question No. 2: Is it permissible for the State education agency (SEA) to contract with another agency to fulfill the requirement of full-time personnel being assigned to work to eliminate sex discrimination and sex stereotyping?

Answer: The DEA may contract for personnel to assist the State board in this capacity, but the contract must specify that the personnel will work full-time to eliminate sex discrimination and sex stereotyping from vocational education programs by performing the functions listed in § 400.75. If the personnel are hired under contract, the State agency is as responsible for the performance of the personnel as it would be if the personnel were employed directly by the State board.

Question No. 3: What should the qualifications be of the full-time personnel to eliminate sex bias, sex discrimination, and sex sterotyping?

Answer: Section 400.72(b) requires the State to match the qualifications of the applicants with the responsibilities of the job. The responsibilities are set forth in § 400.75. In addition, the person selected should have a demonstrated commitment to the elimination of sex bias, sex discrimination, and sex stereotyping.

Question No. 4: How can a State department of education legally monitor the personnel practices of local educational agencies who are, for all practical purposes, autonomous?

Answer: Section 400(b)(1) of the Act requires that the full-time personnel to eliminate sex bias monitor the implementation of laws prohibiting sex discrimination. In a State were the local educational agencies have a great deal of autonomy and the State personnel have no authority to enforce changes, the LEA should have no objection to the full-time personnel visiting to observe their personnel practices, make suggestions, and report violations of Titles VI and IX.

Question No. 5: Does the certification contained in § 400.171(g) detract from the requirements in § 400.75(j) which require the full-time personnel to review and submit recommendations on the State plan?

Answer: No. The certification in § 400.171 (g) does not preclude inclusion of any comments the full-time personnel wish to make. Under § 400.75 (h) and (j), the full-time personnel must make information readily available to the State board and the Secretary and must review the State plan and submit recommendations on it. Comments on the State plan may be submited with the certification or at any other convenient time.

Question No. 6: May a vocational education student be appointed to the State advisory council pursuant to section 408(a)(20) of the Act even though the individual will no longer be a student after two years?

Answer: Yes. Since members of the advisory council must be appointed for terms of three years, an appointment held by a student who is involved in vocational education for a maximum of two years would become vacant after the individual's status as a student expired. The appointing body, therefore, would be required to fill the vacancy for the unexpired term (§ 400.92(c)(2)).

Question No. 7: Must the annual program plan provide information on the allocation of Federal funds to each eligible recipient?

Answer: Yes. Section 108(b)(1)(B)(ii) of the Act provides that the annual program plan must "set out explicitly the proposed distribution of such funds among eligible recipients."

Question No. 8: Are there any complaint procedures available to parents, students, and other individuals to the State education agency?

Answer: Although the Act does not require the State to adopt a formal grievance procedure for parents, students, and other individuals, the State may wish to develop procedures for resolving these complaints. These procedures might include specific time limits for investigation and resolution of complaints, an opportunity for the complainant to present evidence to the State educational agency, and the dissemination of information concerning these procedures. In addition, the complaint procedure for violations of Title IX are contained in 34 CFR 106.8(b).

Question No. 9: How must the State make the five-year plan and annual program plan reasonably available to the public in accordance with section 106(a)(9)?

Answer: The State should make the plans readily available in places such as libraries, community colleges, and local school districts. With regard to members of the general public requesting copies of the plans, the State may wish to follow the standards and fee schedule of the Department's regulations under the Federal Freedom of Information Act (Pub. L. 90-23, 34 CFR Part 5).

Question No. 10: At what stage must the State make the plans available to the public?

Answer: Since the public must have some familiarity with the content of the planning documents prior to the public hearing the State should make drafts of the plans available prior to the public hearings.

Question No. 11: When will the Secretary make the State plans available to the public?

Answer: Under the Department's Freedom of Information Regulations (34 CFR Part 5), "State plan material" is specifically listed in the Appendix as "Generally Available." This means that State plans sent or delivered to the Department, or letters relating thereto, will be available. Therefore, both the five-year State plan and annual program plan will be available to members of the public, on request for the document, as soon as the document is received by the Department in a regional office or the central office. The document will be available on receipt, before the Secretary's review or approval.

Question No. 12: If the State legislature supports the entire cost (other than tuition payments) of operation of postsecondary area vocational schools, how would the relative financial ability of the institution be established pursuant to section 106(a)(5)(B)(1) of the Act?

Answer: An institution with no local tax base for support would have to calculate its relative financial ability on the amount of funds the State legislature makes available to it.

Question No. 13: Two commenters questioned the appropriateness of participants (other than those representatives specified in section 107(a)(1)) being involved in the development of the peon.

Answer: While a State may involve other participants, only one member of each of the designated agencies, councils, and individuals specified in section 107(a)(1) of the Act may be involved in the development of the peon.

Question No. 14: May the State board design the membership of the section 107 planning group in such a way that the State educational agency's personnel constitute a a majority of the voting membership?

Answer: Membership on the planning group is limited to one official representative for each of the agencies, councils, and individual categories specified in section 107(a)(1) of the Act. One person may be the State agency's representative for more than one of the ten categories if that State agency has multi-responsibility. There is, however, no requirement for a vote by each representative.

Question No. 15: Should CETA be included "among the various institutions of the State" under section 107(b)(2)(a)?

Answer: No. CETA is not an institution for purposes of § 107(b)(2)(A). Through the coordination efforts in § 400.188 the State board will have data on programs conducted under CETA and will consider these data in its planning.

Question No. 16: What basis should the State use to determine if a shift in funding for programs in secondary schools has occurred in accordance with § 400.315?

Answer: The State should rely on the 601T forms submitted to the Department for fiscal years 1975 and 1976. These reports should specify the amounts spent at the secondary level. If projected Federal expenditures for programs in secondary schools in either fiscal year 1978 or 1979 are not within 95 percent of the figures reported for fiscal years 1975 or 1976, then a justification must be set forth in the five-year State plan.

Question No. 17: How may a State comply with the section 107(a)(2) and section 108(a)(2) requirement to provide sufficient public notice for public hearings on the five-year plan and annual program plans?

Answer: The State should mail invitations to organizations and individuals in the State having an interest in vocational education and civil rights, publish notices of the hearings in major newspapers, and place announcements on television and radio as appropriate throughout the State, beginning 30 days prior to the hearings.

Question No. 18: Must the section 110 minimum percentages for the national priority programs (handicapped, disadvantaged, postsecondary) be computed against the allotment under section 102(a) prior to the 80/20 split for subparts 2 and 3?

Answer: No. Regardless of whether the computation is made prior to or after the 80/20 division, the minimum percentages must be based on the total allocation, not just the 80 percent for subpart 2 or the 20 percent for subpart 3.

Question No. 19: Must the State pay exactly 50 percent, at least 50 percent, or up to 50 percent for the three national priority programs in section 110 of the Act?

Answer: The State must pay at least 50 percent of the cost of vocational education programs for the national priority programs in section 110 of the Act (§ 400.303).

Question No. 20: May a State use local funds earmarked for local administration as part of the State's matching share for State administration under section 111(a)(2)?

Answer: No. The State matching share must be earmarked for State administration, not local administration. The non-Federal source of funding for State administration, however, may be generated at either the State or local level.

Question No. 21: May a State use tuition fees to meet the statutory matching requirements?

Answer: No. In accordance with § 100b.58 of the General Education Provisions Regulations, tuition and fees collected may not be included as part of the Federal or non-Federal share of expenditures under any Federal program.

Question No. 22: Does the § 400.321 provision of maintenance of fiscal effort allow the State to use a per student basis one year and then change and use aggregated cost the next year?

Answer: Yes. The State may annually select either of the two bases. Local educational agencies and postsecondary institutions may also select either of the two bases.

Question No. 23: To determine maintenance of fiscal effort, will the Secretary compare the amount between the present and previous year or between the preceding and second preceding year?

Answer: In accordance with § 400.322, the Secretary will determine maintenance of effort by comparing the preceding year to the second preceding year.

Question No. 24: Are the evaluations of programs conducted by the State board available to the general public?

Answer: Yes. The annual accountability report, which is available to the public, must contain a summary of the evaluations of programs conducted by the State.

Question No. 25: What does the requirement in section 120(b)(2) of the Act that the State board make a specific finding in each instance of funding for stipends in section 120(b)(1)(G) of the Act pertain to?

Answer: Each eligible recipient in the State desiring to provide stipends to students shall include an assurance in its local application to the State board that students to receive stipends have acute economic needs which cannot be met due to inadequate funding in other programs (§ 400.573).

Question No. 26: Section 400.402 of the regulation gives the State board wide latitude and discretion in regard to the collection and reporting of data to evaluate the effectiveness of its programs. Will it be possible to aggregate across all States the data thus collected and meet the reporting requirements of section 112(b) of the Act?

Answer: Aggregation of the data on program completers and leavers required by section 112(b)(1)(B) of the Act will be assured by use of the uniform definitions and information elements and the instructions and standards required by §§ 400.404(d) and 400.405 of the regulation. As for the evaluation required by section 112(b)(1)(A) of the Act, it is the Secretary's preference that, in view of the increased burden of evaluation under the new Act and the as yet undetermined nature of the new national reporting and accounting system mandated by section 161 of the Act, the State board should be given considerable latitude. After a year of experience with the new Act, it may be found desirable to reconsider the reporting requirements.

Question No. 27: What programs are eligible for funding under the assurance which specifies "of significant assistance to individuals enrolled in making an informed and meaningful occupational choice as an integral part of a program of orientation and preparation"? At what grade level may these programs be offered?

Answer: Prevocational or exploratory programs which are designed to be of significant assistance to individuals enrolled in making an informed and meaningful occupational choice may be funded under the Act. Specifically, programs in industrial arts may be supported with funds under section 120 of the Act beginning at the secondary level (as defined by the State). Exemplary and innovative programs under section 132, consumer and homemaking programs under section 150, and vocational guidance under section 134 may be provided at all levels.

Question No. 28: May subpart 3 funds for program improvement and support services be used for the programs for the special populations described in section 120(b)(1)(L)?

Answer: No. The program outlined in section 120(b)(1)(L) is included among the purposes of the subpart 2 basic grant and, therefore, must be funded under subpart 2.

Question No. 29: May a State satisfy the requirement in § 400.502(b) by providing regular vocational education programs without special courses or instruction in how to seek employment for the special populations listed in § 400.621?

Answer: No. The State must provide these special populations with vocational education programs which offer special instruction in how to seek employment and placement services for graduates.

Question No. 30: Is a correctional institution of the State eligible to receive funds?

Answer: Yes. Under section 195(13) only LEA's or post-secondary institutions are "eligible recipients." The State or eligible recipient may, however, enter into an arrangement with the agency administering correctional institutions for the provision of vocational training.

Question No. 31: May funds available for establishing day care centers be used for the establishment of centers in schools? May these centers also be used as a laboratory for training students for employment in child care occupations?

Answer: Yes. The day care centers may be established in the schools and may serve as a learning laboratory for training students for employment in child care occupations.

Question No. 32: May a State use section 130 funds to support research activities in LEA's?

Answer: Yes. Section 130 authorizes the Secretary to allocate funds to the States for, among others, the purposes of section 131. Section 131(a) authorizes the State to support a research coordinating unit (RCU) for research by the RCU itself or for *contracts* by the RCU for research. Thus, the RCU may enter into a contract with the LEA for research.

Question No. 33: Does the Act require the State to match funds for research, or for exemplary projects, or curriculum development projects, on a program-by-program basis?

Answer: No. Section 111 of the Act does not require a program-by-program matching by the State in programs under sections 130, 131, 132, or 133. See § 400.302 of the regulation as to matching on a State-wide basis and the exceptions.

Question No. 34: May States use funds under § 400.772 to train and upgrade high school counselors to enable them to serve vocational education students better?

Answer: Yes. If the State chooses to use its funds for this purpose, it must incorporate this type of training in its approved five-year State plan and annual program plan for vocational education. Sections 400.772 and 400.773 of the regulations address this point.

Question No. 35: May a State use its vocational education personnel training funds to train interpreter-tutors to work with deaf students of vocational education?

Answer: This use of the funds would be allowable if it is set forth in the approved five-year State plan and annual program plan for vocational education.

Question No. 36: May an LEA use funds under subpart 4, Part B of the Act, "Emergency Assistance for Remodeling and Renovation of Vocational Education Facilities" for new construction?

Answer: No. Section 191 of the Act is clear that this new program is for "modernization of facilities and equipment and the conversion of academic facilities necessary to assure that such facilities will be able to offer vocational education programs which give reasonable promise of employment." The same section refers to "remodeling and renovation" of facilities. There is no authorization in subpart 4 for construction of new facilities. Use of funds for "construction of area vocational education facilities" is authorized in section 120(b)(1)(E).

Question No. 37: Are private, non-profit rehabilitation centers and workshops eligible for emergency remodeling funds under subpart 4?

Answer: No. Section 191 of the Act states, as eligible, only "local educational agencies in urban and rural areas."

Question No. 38: Are leased premises eligible for emergency assistance for remodeling under subpart 4?

Answer: Yes. The Act does not state whether leased premises are eligible for emergency remodeling assistance. Determinations will have to be made on a case-by-case basis. Facilities leased by an LEA under a 99-year lease should be treated as facilities owned by an LEA. Where facilities are leased on a short-term lease, the LEA might not score points under criterion 9 (§ 408.504(b)(9)), as use of funds to renovate premises on a short-term lease might not be economical.

[42 FR 53852, Oct. 3, 1977, as amended at 43 FR 57255, Dec. 7, 1978. Redesignated at 45 FR 86301, Dec. 30, 1980; 46 FR 3207, Jan. 14, 1981]

PART 419—YOUTH EMPLOYMENT PROGRAM

Subpart A—General

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Subpart D—How a Grant Is Made

419.30 How the commissioner evaluates an application.
419.31 Selection criteria the Secretary uses.

Subpart E—Conditions an Applicant Must Meet

419.40 State and local educational agencies must provide an opportunity for private school students to participate.

AUTHORITY: Part f of Title III of the elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561, 92 Stat. 2215, unless otherwise noted.

(20 U.S.C. 2991-2992)

SOURCE: 45 FR 22765, Apr. 3, 1980, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

EFFECTIVE DATE NOTE: At 46 FR 42848, Aug. 25, 1981, Part 419 was removed effective Oct. 1, 1982.

Subpart A—General

§ 419.1 Youth Employment Program.

The Youth Employment Program provides financial assistance for activities to improve youth employment by—

(a) Relating education and work; and

(b) Improving and coordinating educational and employment services.

(20 U.S.C. 2991)

§ 419.2 Eligible applicants.

(a) The following are eligible to receive grants:

(1) State educational agencies (SEAs);

(2) Local educational agencies (LEAs);

(3) Other public and private nonprofit agencies, institutions, and organizations.

(b) The following are eligible to receive procurement contracts:

(1) The agencies and organizations in paragraph (a) of this section; and

(2) Profit-making private organizations.

(20 U.S.C. 2942, 2991)

§ 419.3 Regulations that apply to the Youth Employment Program.

(a) *Regulations for grants.* The following regulations apply to grants under the Youth Employment Program:

(1) The Education Department General Administrative Regulations (EDGAR) in Part 75 (Direct Grant Programs) and Part 77 (Definitions)

(2) Regulations in this part.

(b) *Regulations for procurement contracts.* The regulations in this part do not apply to procurement contracts under this program. Those contracts are subject to—

(1) Federal and ED procurement regulations in 41 CFR Chapters 1 and 34 and;

(2) Requirements and criteria in particular requests for proposal.

(20 U.S.C. 2991)

§ 419.4 Definitions that apply to the program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in Part 77 of EDGAR.

Applicant
Applications
Secretary
Grant
Local educational agency (LEA)
Nonprofit
Private
Program
Project
Public agency
State educational agency (SEA)

(b) *Specific program definitions.* As used in these regulations "Youth" means a person between the ages of 14 and 21.

(20 U.S.C. 1232(a))

Subpart B—Kinds of Projects Assisted Under This Program

§ 419.10 Purpose of the Youth Employment Program.

The purpose of a Youth Employment Program is to prepare children to take their places as working members of society. This is done by developing ways to improve youth employment through—

(a) Relating education and work;

(b) Coordinating and improving educational and employment services; and

(c) Conducting studies on youth employment problems.

(20 U.S.C. 2991)

§ 419.11 What categories of activities are supported?

The Secretary provides assistance for appropriate categories of activities such as the following:

(a) Developing ways to improve youth achievement in basic educational skills by involving youth in work experiences.

(b) Improving job opportunities for youth by coordinating educational activities with youth employment activities at the Federal, State, and local levels with particular emphasis on coordination with youth employment activities carried out by the Secretary of Labor, under the Comprehensive Employment and Training Act (CETA).

(c) Encouraging educational agencies and institutions to develop means to award academic credit for competencies derived from work experience.

(d) Studying the relationship of work to academic and intellectual achievement.

(e) Developing ways to improve career guidance and counseling services.

(f) Developing ways to improve placement and follow-up transition services from school to work, using school and community personnel.

(g) Developing ways to make the high school organization and operation more flexible as it relates to education and work. This includes, but is not limited to, flexibility of: Course schedules, class locations, and school curricula;

(h) Providing technical assistance, information, training, and other assistance—to State Educational Agencies (SEAs), local educational agencies (LEAs) and other public and nonprofit private agencies, organizations, and institutions—for the development of programs that enable students to make the transition from school to work more readily.

(20 U.S.C. 2991)

§ 419.12 Emphasis among categories of activities.

The Secretary may, in any given year, emphasize one or more of the categories of activities in § 419.11 through a notice in the FEDERAL REGISTER.

(20 U.S.C. 2991)

Subpart C—How To Apply for a Grant

§ 419.20 How to apply for a grant.

The "Introduction to Department Grant Programs" at the beginning of the EDGAR includes general information on—

(a) How to use regulations that apply to Department programs, and

(b) How to apply for a grant under a Department program.

(20 U.S.C. 2991)

Subpart D—How a Grant Is Made

§ 419.30 How the Secretary evaluates an application.

(a) The Secretary evaluates an application on the basis of the criteria in § 419.31.

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses at the end of that criterion.

(20 U.S.C. 2991)

§ 419.31 Selection criteria the Secretary uses.

(a) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(vi) For grants made after October 1, 1980, if the applicant is a local educational agency or State educational agency, a clear description of how the applicant will provide an opportunity for participation of students enrolled in private schools. (10 points)

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and train-

ing, in fields related to the objectives of the project, as well as other information that the applicant provides. (7 points)

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project. (5 points)

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable. (5 points)

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project, including resources to meet the needs of persons to be served by the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate. (3 points)

(f) The criteria contained in the following paragraphs supplement the EDGAR criteria and constitute 70 possible points. The Secretary evaluates the extent to which an applicant—

(1) Documents the need for the proposed project in terms of the percentage of youth unemployment in the area to be served; (5 points)

(2) Establishes a need for additional resources to address this unemployment problem; (5 points)

(3) Establishes clearly that the stated objectives of the plan of operation meet the needs identified in paragraph (f)(1) of this section,; (5 points)

(4) Demonstrates how the proposed project will produce new and innovative approaches to solving the youth employment problem including activities linking education and work; (15 points)

(5) Includes appropriate, feasible approaches to foster and sustain communication, coordination, and collaboration—without duplication of efforts—among activities and providers of services under this Act and activities and providers of services under—

(i) The Vocational Education Act;

(ii) The Career Education Incentive Act; and

(iii) In particular, the Comprehensive Employment and Training Act (CETA); (20 points) and

(6) Shows how the results of the proposed project are likely to improve youth employment. (20 points)

(20 U.S.C. 1221e-3(a)(i), 2991)

Subpart E—Conditions an Applicant Must Meet

§ 419.40 State and local educational agencies must provide an opportunity for private school students to participate.

If an SEA or LEA receives a grant under this program, section 302(b) of the Elementary and Secondary Education Act requires that agency to provide for participation by students enrolled in private elementary and secondary schools. EDGAR established the rules for this participation (See EDGAR, 34 CFR 75.650).

(20 U.S.C. 2942(b))

PART 425—ADULT EDUCATION STATE-ADMINISTERED PROGRAM AND SECRETARY'S DISCRETIONARY PROGRAMS

Subpart A—General

Sec.
425.1 What are the adult education programs?
425.2 What is the purpose of the Act?
425.3 What other regulations are applicable to the adult education programs?
425.4 What definitions apply to the adult education programs?

AUTHORITY: Secs. 301-318 of Pub. L. 91-230, as amended by Title XIII of Pub. L. 95-561, 92 Stat. 2356, 20 U.S.C. 1201-1211c, unless otherwise noted.

SOURCE: 45 FR 22777, Apr. 3, 1980, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

Subpart A—General

§ 425.1 What are the adult education programs?

Part 425 contains regulations interpreting or implementing the programs authorized under the Adult Education Act. The programs included in this part are—

(a) State-administered Adult Education Program;

(b) National Adult Education Development and Dissemination Program and Planning Grants; and

(c) Adult Education Programs for Immigrants and Indochina Refugees.

(20 U.S.C. 1201 *et seq.*)

§ 425.2 What is the purpose of the Act?

The purpose of the Act is to—

(a) Expand educational opportunities for adults; and

(b) Encourage the establishment of programs of adult education that will—

(1) Enable all adults to acquire basic skills necessary to function in society;

(2) Enable adults who so desire to continue their education to at least the level of completion of secondary school; and

(3) Make available to adults the means to secure training that will enable them to become more employable, productive, and responsible citizens.

(Sec. 302; 20 U.S.C. 1201)

§ 425.3 What other regulations are applicable to the adult education programs?

(a) The following regulations also apply to the State-administered program and the Secretary's discretionary programs under the Adult Education Act:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs), 34 CFR Part 76 (State-administered Programs), and 34 CFR Part 77 (Definitions).

(2) The Department of Health, Education, and Welfare General Administration Regulations in 34 CFR Part 74 (Administration of Grants).

(3) The Federal Interagency Day Care Regulations in 34 CFR Part 71.

(4) 34 CFR Parts 100 and 101 relating to nondiscrimination on the basis of race.

(5) 34 CFR Part 104 relating to nondiscrimination on the basis of handicap.

(6) 34 CFR Part 106 relating to nondiscrimination on the basis of sex.

(7) 45 CFR Part 46 relating to the protection of human subjects.

(8) 34 CFR Part 110 relating to nondiscrimination on the basis of age.

(b) The "Introduction to Department Programs" at the beginning of EDGAR includes general information to assist recipients in—

(1) Using regulations that apply to Department programs; and

(2) Applying for assistance under a Department program.

(20 U.S.C. 1201, 1221)

§ 425.4 What definitions apply to the adult education programs?

(a) *Statutory definitions.* The following terms used in this part are defined in section 303 of the Act:

(1) The term "adult" means any individual who has attained the age of sixteen.

(2) The term "adult education" means services or instruction below the college level (as determined by the Secretary), for adults who—

(i) Lack sufficient mastery of basic educational skills to enable them to function effectively in society or who do not have a certificate of graduation from a school providing secondary education and who have not achieved an equivalent level of education; and

(ii) Are not currently required to be enrolled in schools.

(3) The term "adult basic education" means adult education for adults whose inability to speak, read, or write the English language constitutes a substantial impairment of their ability to get or retain employment commensurate with their real ability, which is

designed to help eliminate such inability and raise the level of education of such individuals with a view to making them less likely to become dependent on others, to improving their ability to benefit from occupational training and otherwise increasing their opportunities for more productive and profitable employment, and to making them better able to meet their adult responsibilities.

(4) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico and (except for the purposes of section 305(a)) Guam, American Samoa, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and the Virgin Islands.

(5) The term "institution of higher education" means any such institution as defined by section 801(e) of the Elementary and Secondary Education Act of 1965.

(Sec. 303; 20 U.S.C. 1202)

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

(1) Applicant
(2) Application
(3) Award
(4) Budget period
(5) Secretary
(6) Local educational agency
(7) Nonprofit
(8) Private
(9) Project
(10) Project period
(11) Public
(12) State educational agency

(c) *Definitions in 34 CFR Part 74.* The following terms used in this part are defined in 34 CFR Part 74:

(1) Budget
(2) Grant
(3) Grantee
(4) Subgrant
(5) Subgrantee

(d) *Program definitions.* The following definitions also apply to the adult education programs:

(1) "Act" means the Adult Education Act (20 U.S.C. 1201 *et seq.*).

(2) "Expansion" means that the State educational agency has increased during the period covered by the three-year plan—

(i) The number of agencies, institutions, and organizations—other than local educational agencies—used to provide adult education and support services; and

(ii) One or both of the following:

(A) The number of adults least educated and most in need of assistance participating in the adult education program.

(B) The percentage of adults least educated and most in need of assistance who met their educational objectives.

(3) "Immigrant," as used in this part, means any refugee admitted (paroled) into this country or any alien except one who is exempt under the provisions of the Immigration and Nationality Act, as amended.

(8 U.S.C. 1101(a)(15))

(4) "Indochina refugee," as defined in the Indochina Migration and Refugee Assistance Act of 1975, as amended by Pub. L. 94-313, and as used in this part, means an alien who because of persecution or fear of persecution on account of race, religion, or political opinion, fled from Cambodia, Vietnam, or Laos; cannot return there because of fear of persecution on account of race, religion, or political opinion; and is in urgent need of assistance for the essentials of life.

(22 U.S.C. 2601)

(5) "Institutionalized person" means an adult, as defined in the Act, who is an inmate, patient, or resident of a special institution.

(6) "Limited English proficiency" or "limited English language skills" refers to difficulty in speaking, reading, writing, or understanding the English language so that adults are denied the opportunity to learn successfully in a learning environment where the language of instruction is English.

(7) "Outreach" means activities designed to—

(i) Inform adult populations who are least educated and most in need of assistance of the availability and benefits of the adult education program; and

(ii) Assist these adult populations to participate in the program by providing reasonable and convenient access.

(20 U.S.C. 1202)

PART 426—STATE-ADMINISTERED ADULT EDUCATION PROGRAM

Subpart A—General

Sec.
426.10 How is the adult education State-administered program governed?

Subpart B—How a State Applies for a Grant

426.11 Who is eligible?
426.12 What documents must a State submit to receive its grant?
426.13 What must the State plan contain?
426.14 How is the State plan developed?
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426.23 How is the membership of a State advisory council determined?
426.24 How is the membership of a State advisory council certified?
426.25 What are the functions and responsibilities of a State advisory council?
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426.31 How is the amount of each State's grant determined?
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Subpart E—How To Apply to the State for a Subgrant

426.41 Who is eligible for a subgrant?

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426.63 How is a maintenance of effort waiver granted?
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426.65 How is maintenance of effort computed in the event of a waiver?
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Subpart H—State-administered Special Experimental Demonstration Projects and Teacher Training Projects

426.71 Who are the eligible applicants for these projects?
426.72 What are the criteria and priorities in administering these projects?
426.73 How will a State administer these projects?
426.74 How will the results be disseminated?

AUTHORITY: Secs. 301-318 of Pub. L. 91-230, as amended by Title XIII of Pub. L. 95-561, 92 Stat. 2356, 20 U.S.C. 1201-1211c, unless otherwise noted.

SOURCE: 45 FR 22778, Apr. 3, 1980, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

Subpart A—General

§ 426.10 How is the adult education State-administered program governed?

(a) *Federal-State relationship.* The adult education State-administered program is a cooperative effort between the Federal Government and the States to provide adult education. Federal funds are granted to the States on a formula basis. The States fund local programs of adult education based on need and resources available.

(b) *Other applicable provisions.* The provisions of §§ 425.1 through 425.4 of 34 CFR Part 425 apply to the State-administered Adult Education Program under this part.

(20 U.S.C. 1201)

Subpart B—How a State Applies for a Grant

§ 426.11 Who is eligible?

Any State may apply for a grant under this part.

(Sec. 304(a); 20 U.S.C. 1206)

§ 426.12 What documents must a State submit to receive its grant?

A State educational agency shall submit to the Secretary:

(a) A single State application as required by section 435 of the General Education Provisions Act. If a State educational agency has on file with the Secretary a single State application for all education programs, this requirement is satisfied.

(b) A State plan, developed once every three years, that meets the requirements of these regulations and the Act.

(c) The certification required by 34 CFR 76.104 of EDGAR.

(d) Program assurances, signed by an authorized official of the State educational agency, to provide that—

(1) The State educational agency, in carrying out the adult education program, will provide for—

(i) Adequate consultation, cooperation, and coordination among the State educational agency, State manpower service councils, State occupational information systems, and other agencies, organizations, and institutions in the State that operate employment and training programs or other educational or training programs for adults; and

(ii) Coordination of programs carried on under this title with other programs, including reading improvement programs, which are designed to provide reading instruction for adults and are conducted by State and local agencies.

(2) The State educational agency will make available not to exceed 20 percent of the State's allotment for programs of equivalency for a certificate of graduation from a secondary school.

(3) The State educational agency will ensure that special emphasis will be given to adult basic education programs except where these needs have been met in the State.

(4) Adults enrolled in adult basic education programs will not be charged tuition, fees, or any other charges, or be required to purchase any books or any other materials that are needed for participation in the program.

(5) Not more than 20 percent of the funds granted to the State under the Act for any fiscal year shall be used for the education of institutionalized adults.

(6) The State educational agency will provide that special assistance be given to the needs of persons with limited English proficiency by providing bilingual adult education programs of instruction in English and, to the extent necessary to allow these persons to progress effectively through the adult education program, in the native language of these persons. These programs will be carried out in coordination with programs of bilingual education assisted under title VII of the Elementary and Secondary Education Act of 1965 and bilingual vocational education programs under the Vocational Education Act of 1963, as amended.

(7) For each fiscal year covered by this plan, the State will have available for expenditure for adult education from non-Federal sources an amount that is not less than the fiscal effort per student or the aggregate amount expended for adult education purposes from non-Federal sources during the preceding fiscal year.

NOTE: In the event of exceptional and unforeseen circumstances, the State may, under § 426.63, request a one-time waiver of this requirement.

(8) The State educational agency will monitor and report program performance in accordance with Subpart J of 34 CFR Part 74.

(Secs. 304(b), 306, 307(b); 20 U.S.C. 1203, 1205, and 1206)

§ 426.13 What must the State plan contain?

(a) A State educational agency shall include in its State plan a description of the policies, procedures, and activities for carrying out the requirements—

(1) Listed in section 306(b) of the Act; and

(2) Included in these regulations.

(b) A State educational agency may meet the requirements of section 306(b)(2) and (6), covering administration, fiscal control, and fund accounting procedures, by submitting to the

Secretary a single State application under section 435 of the General Education Provisions Act.

(c) A State educational agency shall describe, for the three-year period covered by the plan, the adult education needs of all segments of the adult population in the State. A State educational agency shall specifically describe the needs of those adults who are least educated and most in need of assistance.

(d) A State educational agency shall identify the other Federal and non-Federal resources available to meet the needs described in paragraph (c) of this section.

(e) (1) A State educational agency shall identify the goals it intends to achieve in meeting the needs described in paragraph (c) of this section for the period covered by the plan.

(2) A State educational agency shall describe proposed activities and estimated expenditures of reaching each goal.

(f) (1) A State educational agency shall describe the outreach activities that the State intends to carry out during the period covered by the plan.

(2) In conjunction with these outreach activities, a State educational agency shall describe the efforts it will undertake to assure support services during the period covered by the plan. Support services include flexible schedules, transportation, and day care services. A State educational agency shall identify the resources to be used for these support services. A concerted effort shall be undertaken to provide these services through other programs, agencies, and organizations.

(g) A State educational agency shall describe its procedures for ensuring that cooperative arrangements will be entered into with other agencies for delivering adult education and support services.

(h) A State educational agency shall describe the criteria for evaluating project applications.

(i) In any plan submitted subsequent to the initial three-year plan under the Act, a State educational agency shall describe—

(1) Its accomplishments, in meeting the goals included in the previous three-year plan; and

(2) How the assessment of accomplishments and the evaluation required by paragraph (k) of this section were considered in establishing the State's goals for adult education in the plan being submitted.

(j) A State educational agency shall describe its policies, procedures, and activities for carrying out special experimental demonstration projects and teacher training projects that meet the requirements of §§ 426.71 through 426.74 of these regulations.

(k) A State educational agency shall provide for an evaluation of activities under sections 306 and 310 of the Act. The evaluation shall be performed at least once every three years. Evaluation procedures, schedule of evaluations, and specific criteria to be used in assessing the effectiveness of all activities shall be included in the State plan. A summary of the State's evaluation of activities shall be sent to the Secretary within 90 days of the close of each program year.

(l) If applicable, a State educational agency shall include in the plan a notification of the establishment of and membership of a State advisory council that meets the rquirements of §§ 426.21 through 426.27 of these regulations. Because the Act does not require a State educational agency to establish a State advisory council, only States that fund councils out of the Federal allotment or non-Federal matching funds are subject to these requirements.

(Secs. 306, 312; 20 U.S.C. 1205, and 1211)

§ 426.14 How is the State plan developed?

(a) A State educational agency shall involve in the development of the plan one or more representatives of each of the following agencies and groups:

(1) The business community

(2) Industry

(3) Labor unions

(4) Public educational agencies and institutions

(5) Private educational agencies and institutions

(6) Churches

(7) Fraternal/sororal organizations

(8) Voluntary organizations

(9) Community organizations

(10) State manpower and training agencies

(11) Local manpower and training agencies

(12) Adult residents of rural areas

(13) Adult residents of urban areas with high rates of unemployment

(14) Adults with limited English language skills

(15) Institutionalized adults

(16) Other entities concerned with adult education, such as the Right to Read and Basic Skills programs, volunteer literacy programs, libraries, and organizations offering education programs for older persons and military personnel and their adult dependents.

(b) A State educational agency shall describe in its plan—

(1) How the representatives in paragraph (a) of this section were selected; and

(2) The means by which these representatives were involved in the development of the plan.

(c) The Secretary considers the term "involved in the development of the plan" to mean that the representatives in paragraph (a) of this section are given an opportunity to actively participate in all stages of formulating the plan.

(d) If the participating representatives are not able to agree upon the provisions of the final plan, the State educational agency shall make the final decision. A State educational agency shall included in the plan—

(1) Any recommendation that is rejected; and

(2) The reasons for rejecting the recommendation.

(Sec. 306; 20 U.S.C. 1205)

§ 426.15 What other requirements must a State educational agency meet?

(a) A State educational agency shall develop a statewide program in which the adult populations in the State that are least educated and most in need of assistance learn most effectively.

(b) A State educational agency shall design a statewide program to allow adult education services to be provided by those agencies that can reach the adult populations most in need. This expansion of the adult education program may require using agencies (i.e., a private for-profit organization) other than applicants eligible for subgrants under the Act.

(H.R. Rept. No. 95-1137, p. 128; Sen. Rept. No. 95-856, p. 103)

(c) If a private for-profit organization is used, a State educational agency or eligible applicant shall enter into a contractual arrangement for the provision of adult education services. A contract shall be entered into only upon a determination by a State or eligible applicant that—

(1) The contract is in accordance with State and local law and Subpart P, Procurement Standards, 34 CFR Part 74; and

(2) The service to be provided will constitute a reasonable and prudent use of funds available under the State plan.

(d) A State educational agency or eligible applicant may enter into a voluntary arrangement with a private for-profit organization for the provision of adult education services. For example, an eligible applicant may enter into a voluntary arrangement with a business organization for the use of facilities, personnel, or other services.

(e) At least annually a State educational agency shall give the representatives listed in § 426.14(a) of these regulations the opportunity to comment on—

(1) How the State educational agency is carrying out the plan; and

(2) The expansion of the delivery system for providing adult education services.

(f) A State educational agency shall consider the comments submitted under paragraph (e) of this section in carrying out its State plan. A State educational agency shall include a summary of these comments in its subsequent three-year plan.

(Sec. 306(b) (7), (8); 20 U.S.C. 1205)

Subpart C—State Advisory Councils

§ 426.21 What are a State's responsibilities regarding State advisory councils?

(a) A State that receives funds under section 304 of the Act may establish and maintain a State advisory council, or may designate and maintain an existing State advisory council.

(b) A State advisory council that is funded solely from non-Federal sources that are not part of State or local matching funds is not required to comply with the requirements of §§ 426.22 through 426.27.

(Sec. 312(a); 20 U.S.C. 1210)

§ 426.22 How is a State advisory council established?

A State advisory council shall be appointed by the Governor or, in the case of a State in which members of the State board that governs the State educational agency are elected (including election by the State legislature), by that board.

(Sec. 312(a); 20 U.S.C. 1210)

§ 426.23 How is the membership of a State advisory council determined?

(a) The membership of a State advisory council shall include a significant proportion of women, the elderly, minorities, and the educationally disadvantaged in the State in order to reflect the diverse interests and needs of the adult population served by the Act.

(b) The membership of the council shall be organized to include—

(1) Persons who, by reason of experience or training, are knowledgeable in the field of adult education or who are officials of the State educational agency or of local educational agencies of that State;

(2) Persons who are receiving or who have received adult education services; and

(3) Persons who are representative of the general public.

(Sec. 312(b); 20 U.S.C. 1210)

§ 426.24 How is the membership of a State advisory council certified?

(a) A State educational agency shall notify the Secretary of the establishment of, and membership of, its State advisory council.

(1) The notification shall be attached to the State plan or be submitted at a subsequent time in cases where a State advisory council is established after the State plan has been approved.

(2) The notification shall include the name, education, experience, and current position of each person serving on the State advisory council and shall specify which interest under § 426.23(b) each person represents.

(b) Upon receiving the notification, the Secretary shall, as appropriate certify that the council membership is in compliance with the requirements set forth in the Act and in § 426.23(b) of these regulations.

(Sec. 312(c); 20 U.S.C. 1210)

§ 426.25 What are the functions and responsibilities of a State advisory council?

A State advisory council shall—

(a) Advise the State educational agency on the development and administration of the State plan approved under the Act and the regulations in this part;

(b) Advise the State educational agency on policy matters arising in the administration of the State plan approved under the Act and the regulations in this part;

(c) Advise the State educational agency with respect to long-range planning;

(d) Advise the State educational agency with respect to studies to evaluate adult education programs, services, and activities assisted under the Act; and

(e) Prepare and submit an annual report of its recommendations to—

(1) The State educational agency; and

(2) The National Advisory Council on Adult Education, established under section 313 of the Act. A copy of any comments of the State educational agency, as that agency considers appropriate, shall be included with this report.

(Sec. 312(b); 20 U.S.C. 1210)

§ 426.26 What are the requirements for State advisory council meetings?

(a) A State advisory council shall meet within 30 days after certification by the Secretary and select from its membership a chairperson.

(b) A State advisory council shall meet at least four times each year.

(1) Except as provided in paragraph (a) of this section, the time, place, and manner of subsequent meetings shall be provided by the rules of the State advisory council.

(2) At least one of the meetings each year shall be an open meeting, at which members of the public are given the opportunity to express views concerning adult education.

(Sec. 312(d); 20 U.S.C. 1210)

§ 426.27 What costs are allowable?

(a) A State advisory council may obtain the services of professional, technical, and clerical personnel as may be necessary to enable it to carry out its functions under the Act.

(b) Members of a State advisory council and its staff, while serving on the business of the council, may receive subsistence, travel allowances, and compensation in accordance with State law, regulations, and practices applicable to persons performing comparable duties and services.

(c) Costs incurred under paragraphs (a) and (b) of this section shall be included as part of the administrative expenditures reported by the State.

(Sec. 312(e); 20 U.S.C. 1210)

Subpart D—How a Grant Is Made to a State

§ 426.31 How is the amount of each State's grant determined?

(a) The Secretary determines the amount of each State's grant according to the formula in section 305(a) of the Act.

(b) The Secretary, from a one percent reserve, determines the amount of the grants to American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(Sec. 305; 20 U.S.C. 1206)

§ 426.32 What is each State's limitation on administrative costs?

The Secretary notifies each State annually of the maximum amount allowable for administrative activities under section 315(b) of the Act. The non-Federal share of funds available under the State plan may also be used to pay administrative costs.

(Sec. 315; 20 U.S.C. 1211)

Subpart E—How To Apply to the State for a Subgrant

§ 426.41 Who is eligible for a subgrant?

(a) A State educational agency shall distribute grants on the basis of annual applications submitted by eligible applicants. Eligible applicants are local educational agencies and public or private nonprofit agencies, organizations, and institutions.

(b) A State educational agency may not review an annual application from a public or private nonprofit agency, organization, or institution other than a local educational agency unless this applicant—

(1) Provides documentation to the State that advice on the development of its annual application has been sought from the applicable local educational agency. For the purpose of this section, "applicable local educational agency" refers to the legally constituted public board of education or administrative agency located in the same city, county, township, school district, or other political subdivision of the State to be served by the application; and

(2) Provides the local educational agency the opportunity to comment on the application prior to submitting it to the State.

(c) A State that is prohibited by State law from awarding Federal funds by grant or contract to public or private nonprofit agencies, other than local educational agencies, shall—

(1) Include in its State plan the legal basis of this prohibition; and

(2) Give priority to local educational agencies that propose to enter into cooperative arrangements with public or private nonprofit agencies for the delivery of services.

(d) A State educational agency shall give public notification of the availability of Federal and State funds to eligible applicants.

(1) For the purpose of notifying local educational agencies, a State educational agency shall provide the notice directly.

(2) For the purpose of notifying public or private nonprofit agencies, organizations, and institutions, a State educational agency shall give sufficient public notice throughout all regions of the State.

(Secs. 304, 306(b)(7); 20 U.S.C. 1203)

Subpart F—How a Subgrant Is Made to an Applicant

§ 426.51 How will a State review annual applications?

(a) A State educational agency shall review annually all applications submitted by eligible applicants to determine if the requirements of § 426.41 are satisfied. A State educational agency shall disapprove applications that fail to meet the requirements of § 426.41.

(b) In evaluating the quality of applications, a State educational agency shall employ a competitive process that considers the best possible combination of agencies, organizations, and institutions. In developing objective criteria for review of applications, a State educational agency shall take into account the following factors:

(1) The needs of the population to be served by the applicant.

(2) The extent to which the applicant proposes projects to reach adult populations least educated and most in need of assistance.

(3) The extent to which the applicant gives special emphasis to adult basic education projects.

(4) The adequacy of outreach activities, including—

(i) Flexible schedules to accommodate the greatest number of adults who are least educated and most in need of assistance;

(ii) Locations of facilities offering programs that are convenient to large concentrations of the adult populations identified by the State in response to § 426.13(c) of these regulations or how the locations of facilities will be convenient to public transportation; and

(iii) The availability of day care services to participants in the project.

(5) The extent to which cooperative arrangements with other agencies will be used for delivering adult education and support services.

(6) The resources available to the applicant—other than Federal and State adult education funds—to meet these needs (e.g., the Comprehensive Employment and Training Act (CETA), Title XX of the Social Security Act, local cash or in-kind contributions).

(7) The extent to which the proposed activity addressed the identified needs.

(8) The extent to which the project objectives can be accomplished within the amount of the budget request.

(c) A State educational agency shall describe in its State plan the method of determining the amount of funds to be distributed to applicants approved for funding.

(d) A State educational agency that is prohibited by State law from awarding Federal funds by grant or contract to public or private nonprofit agencies, other than local educational agencies, shall describe in its State plan how priority will be given to local educational agencies that propose to enter into cooperative arrangements with public or private nonprofit agencies for the delivery of services.

(Secs. 304, 306; 20 U.S.C. 1205)

Subpart G—Conditions That Must Be Met by a State

§ 426.61 What are the matching requirements of the program?

(a) The Federal share of expenditures made under the State plan shall not exceed 90 percent.

(b) No matching is required for American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(c) (1) The non-Federal share of expenditures under the State plan shall be the difference between the Federal share and the total expenditures for the purposes for which the Federal share is paid.

(2) The non-Federal share of expenditures under the State plan may be computed on a statewide basis and may come from any source other than Federal assistance so long as these expenditures are made to further the purposes of the State plan approved under this part.

(Sec. 307; 20 U.S.C. 1206)

§ 426.62 What are the maintenance of effort requirements of the program?

(a) (1) To be eligible for Federal funds a State shall maintain its fiscal effort.

(2) A State shall expend for adult education from non-Federal sources an amount equal to the fiscal effort of the State in the preceding fiscal year.

(3) A State may determine its fiscal effort on a per student basis or on a total expenditure basis.

(b) The Secretary does not make any payment to a State in any fiscal year unless the Secretary finds that the fiscal effort of a State for adult education for the preceding fiscal year was not less than the fiscal effort expended for adult education purposes during the second preceding fiscal year.

(Sec. 307; 20 U.S.C. 1206)

§ 426.63 How is a maintenance of effort waiver granted?

(a) During the life of the Act, the Secretary may waive for *one* fiscal year only the maintenance of effort requirement in section 307(b) of the Act if the Secretary determines it would be equitable to do so in view of exceptional and unforeseen circumstances affecting the State.

(b) (1) If a State educational agency wishes to receive a waiver from the maintenance of effort requirement under § 426.62(a) of these regulations, the State educational agency shall submit a request for a waiver with its three-year State plan or as an amendment to the plan.

(2) A State educational agency shall include in the request for a waiver the reason for the request and any additional information the Secretary may require.

(Sec. 431A (GEPA); 20 U.S.C. 1232-1)

§ 426.64 What are exceptional and unforeseen circumstances?

(a) The Secretary considers exceptional and unforeseen circumstances to include situations in which the local educational agency or the State had no control of the events resulting in decreased expenditures but made a reasonable effort in a timely fashion to comply with the maintenance of effort requirement of the Act.

(b) Exceptional and unforeseen circumstances include, but are not limited to, the following situations:

(1) A sudden, substantial reduction in available revenue due to—

(i) A natural or man-made disaster;

(ii) The unforeseen removal of property from the tax roll by government action; or

(iii) The unforeseen departure of an industrial or commercial facility.

(2) A sudden and substantial diversion of available revenue to other purposes outside the control of the local educational agency or the State.

(3) Decreased expenditures by the State that are directly attributable to strikes involving educational or service personnel or both.

(4) Reductions of services to adults that are directly attributable to energy shortages or conservation measures resulting in a general reduction of educational services throughout the State or any of its local educational agencies.

(Sec. 431A (GEPA); 20 U.S.C. 1232-1)

§ 426.65 How is maintenance of effort computed in the event of a waiver?

(a) In any case in which the Secretary grants a waiver to a State under these regulations, the Secretary reduces the amount of the Federal payment to that State for the current fiscal year in the exact proportion to which the fiscal effort of the State was less than 100 percent of its fiscal effort for the second preceding fiscal year. For example, if a State, having received a waiver under this section, reduced its expenditures in the preceding fiscal year 20 percent below the second preceding fiscal year, the Secretary reduces the amount of the Federal payment for the current fiscal year by 20 percent.

(b) Fiscal effort for the year following the year for which a waiver is granted shall be based on the level of effort that existed prior to the waiver. For example, if in FY 1981 a State receives a waiver for its failure in FY 1980 to maintain fiscal effort at the level established in FY 1979, the State shall compute its fiscal effort for FY 1981 on the basis of the fiscal effort for FY 1979.

(Sec. 431A (GEPA); 20 U.S.C. 1232-1)

§ 426.66 What are the percentage requirements with respect to State distribution of Federal funds?

(a) The percentage requirements in this section are applicable to a State's grant under section 305 of the Act.

(b) A State educational agency may expend an amount not to exceed 20 percent of its grant for programs of equivalency for a certificate of graduation from a secondary school.

(c) A State educational agency shall expend an amount not less than 10 percent of its grant for special experimental demonstration projects and teacher training projects described in §§ 426.71 through 426.74.

(d) A State educational agency may expend an amount not more than 20 percent of its grant for the education of institutionalized adults.

(Secs. 304, 306, 310; 20 U.S.C. 1203, 1205, 1208)

Subpart H—State-Administered Special Experimental Demonstration Projects and Teacher Training Projects

§ 426.71 Who are the eligible applicants for these projects?

(a) (1) Eligible applicants include any State of local educational agency or public or private nonprofit agency, organization, or institution.

(2) Unless precluded by State law, individuals are eligible applicants.

(b) A State may award funds under this subpart to eligible applicants outside the boundaries of the State if that award is determined to be in the best interest of the State in meeting its priorities and the purposes of the Act.

(Sec. 310; 20 U.S.C. 1208)

§ 426.72 What are the criteria and priorities in administering these projects?

(a) (1) A State educational agency shall establish its own statewide criteria and priorities for administering special projects and teacher training projects.

(2) A State educational agency shall include the criteria and priorities in the State plan.

(3) In establishing statewide criteria and priorities, a State educational agency shall give consideration to serving adults who are least educated and most in need of assistance.

(b) (1) The Secretary publishes national priorities in adult education in the FEDERAL REGISTER.

(2) Each State shall indicate in its State plan how the statewide criteria and priorities relate to published national priorities.

(Sec. 310; 20 U.S.C. 1208)

§ 426.73 How will a State administer these projects?

(a) A State educational agency shall—

(1) Administer these projects consistent with the other regulations listed in 34 CFR 425.3 of these regulations;

(2) Make a general announcement of the availability of Federal and State funds for special projects and teacher training projects;

(3) Establish procedures for submitting and reviewing applications. These procedures shall be consistent with Subparts D and E of 34 CFR Part 76 of EDGAR; and

(4) Distribute funds to applicants approved for funding on the basis of the criteria and priorities developed under § 426.72 of these regulations.

(b) A State educational agency may—

(1) Approve projects for a multi-year period; and

(2) In accordance with State law, policies, and procedures, make provisions for stipends and travel allow-

ances for participants in teacher training projects.

(Sec. 310; 20 U.S.C. 1208)

§ 426.71 How will the results be disseminated?

(a) (1) A State educational agency shall develop and describe in its State plan the procedures for disseminating results of these activities.

(2) A copy of each final report of special projects and teacher training projects supported under this subpart shall be sent to—

(i) The Secretary; and

(ii) The adult education information clearinghouse authorized by section 309(a)(1)(C) of the Act.

(Secs. 435 (GEPA), 310; 20 U.S.C. 1208)

PART 431—NATIONAL ADULT EDUCATION DEVELOPMENT AND DISSEMINATION PROGRAM AND PLANNING GRANTS

Subpart A—General

Sec.
431.101 How do the National Adult Education Development and Dissemination Program and Planning Grants relate to the overall adult education program?
431.102 Who is eligible to apply for a grant?

Subpart B—Kinds of Projects the Department May Assist Under These Programs

431.111 What types of projects may be funded?

Subpart C—How To Apply for a Grant

431.121 What must an application for a grant contain?
431.122 What is the duration of a project grant?

Subpart D—How a Grant Is Made

431.131 How does the Secretary evaluate an application?
431.132 What selection criteria does the Secretary use?

Subpart E—Conditions That Must Be Met by a Grantee

431.141 What are the cost requirements under this program?
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431.142 What documents must a State educational agency have on file with the Secretary to be eligible for a planning grant?
431.143 What records and reports are required of the grantee?

AUTHORITY: Secs. 301-318 of Pub. L. 91-230, as amended by Title XIII of Pub. L. 95-561, 92 Stat. 2356, 20 U.S.C. 1201-1211c, unless otherwise noted.

SOURCE: 45 FR 22783, Apr. 3, 1980, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

Subpart A—General

§ 431.101 How do the National Adult Education Development and Dissemination Program and Planning Grants relate to the overall adult education program?

(a) *Program description.* This program provides Federal assistance for development, demonstration, and dissemination projects that will improve or be of national significance to the adult education program. Planning grants provide Federal assistance to State educational agencies to plan for the expansion of their systems for the delivery of adult education services. This program is authorized under section 309 of the Act.

(b) *Other applicable provisions.* The provisions of 34 CFR 425.1 through 425.4 of 34 CFR Part 425 apply to the National Adult Education Development and Dissemination Program and Planning Grants under this part.

(Sec. 309; 20 U.S.C. 1207a)

§ 431.102 Who is eligible to apply for a grant?

(a) For a planning grant, only a State educational agency is eligible to apply.

(b) For all other projects, eligible applicants include public and private nonprofit agencies, institutions, and organizations.

(Sec. 309; 20 U.S.C. 1207a)

Subpart B—Kinds of Projects the Department May Assist Under These Programs

§ 431.111 What types of projects may be funded?

(a) The Secretary may fund projects and activities that improve and promote effective adult education programs and further the purposes of the Act by—

(1) Carrying out demonstration activities; and

(2) Developing, evaluating, and disseminating systems, materials, new approaches, and innovative methods.

(b) The Secretary may award a planning grant to a State educational agency to plan the expansion of its adult education delivery system that—

(1) Involves adults with less than a high school education and those adults who are least educated and most in need of assistance in the process of identifying the adult education needs within the State;

(2) Develops a coordinated strategy to meet the adult education needs of the State; and

(3) Involves local educational agencies, business, industries, community organizations, and other institutions.

(c) Projects under paragraph (a) of this section shall address national priorities established and announced in the FEDERAL REGISTER by the Secretary. The Secretary will invite public comment on the national priorities.

(d) Projects for the development of curricula or instructional materials shall be conducted in accordance with section 426 of the General Education Provisions Act.

(e) The Secretary may fund one or more of the types of projects described in paragraphs (a) and (b) of this section by publishing a notice in the FEDERAL REGISTER.

(Sec. 309; 20 U.S.C. 1207a)

Subpart C—How To Apply for a Grant

§ 431.121 What must an application for a grant contain?

An application shall contain—

(a) Information required by the Notice of Closing Date published in the FEDERAL REGISTER;

(b) Information that meets the application content requirements of 34 CFR 75.108 through 75.116 of EDGAR;

(c) For a multi-year or for subsequent years of a development or dissemination project, information that meets the requirements of 34 CFR 75.117, 75.118, and 75.250 through 75.253 of EDGAR; and

(d) Any additional information required by the Secretary in the application package.

(Sec. 309; 20 U.S.C. 1207a)

§ 431.122 What is the duration of a project grant?

(a) A grant period is for not more than one year.

(b) Development and dissemination projects may be approved for a multi-year period.

(c) Planning grants may be approved for a period of not more than one year.

(Sec. 309; 20 U.S.C. 1207a)

Subpart D—How a Grant Is Made

§ 431.131 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 431.132 of these regulations.

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses after the heading for that criterion.

§ 431.132 What selection criteria does the Secretary use?

(a) *Plan of operation* (40 points).

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) In the case of projects offering educational services, a clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(b) *Quality of key personnel* (20 points).

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness* (15 points).

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan* (10 points).

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590 of EDGAR—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources* (15 points).

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 1221e-3(a)(1))

Subpart E—Conditions That Must Be Met by a Grantee

§ 431.141 What are the cost requirements under this program?

(a) Allowable costs under grants awarded under section 309 of the Act are determined in accordance with the applicable cost principles of 34 CFR 75.530 through 75.534 of EDGAR and Subpart Q of 34 CFR Part 74.

(b) No cost sharing is required.

(c) Neither stipends nor dependency allowances are allowable.

(d) Projects combining funds under section 309 of the Act with other Federal, State, or local funds shall contain provisions for separate accounting.

(Sec. 309; 20 U.S.C. 1207a)

§ 431.142 What documents must a State educational agency have on file with the Secretary to be eligible for a planning grant?

A State educational agency must have on file with the Secretary—

(a) An approved three-year plan. Regulations governing the development, submission, and approval of the plan are in 34 CFR 425.1 through 426.74 of these regulations.

(b) A single State application required by section 435 of the General Education Provisions Act.

(Sec. 309; 20 U.S.C. 1207a)

§ 431.143 What records and reports are required of the grantee?

(a) A grantee shall keep records that meet the requirements in 34 CFR 75.730 through 75.734 of EDGAR.

(b) A grantee shall submit reports as part of the financial and performance reporting requirements in 34 CFR 75.720 of EDGAR and Subparts I and J of 34 CFR Part 74.

(Sec. 309; 20 U.S.C. 1207a)

PART 432—ADULT EDUCATION PROGRAMS FOR IMMIGRANTS AND INDOCHINA REFUGEES

Subpart A—General

Sec.
432.201 How do the Adult Education Programs for Immigrants and Indochina Refugees relate to the overall adult education program?
432.202 Who is eligible to apply for a grant?

Subpart B—Kinds of Projects the Department May Assist Under These Programs

432.211 What is a special adult education project for immigrants or Indochina refugees?
432.212 What are eligible activities under the special adult education programs for immigrants and Indochina refugees?
432.213 What is the special population to be served by a project?

Subpart C—How to Apply for a Grant

432.221 What must an application for a grant contain?
432.222 State review of applications.
432.223 What is the duration of Federal support?

Subpart D—How a Grant is Made

432.231 How does the Secretary evaluate an application?
432.232 What selection criteria does the Secretary use?

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Subpart E—Conditions That Must Be Met by a Grantee

432.241 What are the cost requirements under these programs?
432.242 What records and reports are required of the grantee?

AUTHORITY: Secs. 301-318 of Pub. L. 91-230, as amended by Title XIII of Pub. L. 95-561, 92 Stat. 2356, 20 U.S.C. 1201-1211c, unless otherwise noted.

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Subpart A—General

§ 432.201 How do the Adult Education Programs for Immigrants and Indochina Refugees relate to the overall adult education program?

(a) *Program description.* These programs provide Federal assistance to operate special adult education projects for immigrants and for Indochina refugees. These programs are authorized under sections 318 and 317 of the Act.

(b) *Other applicable provisions.* The provisions of §§ 425.1 through 425.4 of 34 CFR Part 425 apply to the Adult Education Programs for Immigrants and Indochina Refugees under this part.

(Secs. 318, 317; 20 U.S.C. 1211c, 1211b)

§ 432.202 Who is eligible to apply for a grant?

(a) Only the following are eligible to apply for a grant to operate an adult education project for immigrants:

(1) State educational agencies.

(2) Local educational agencies.

(3) Public nonprofit agencies, organizations, or institutions.

(4) Private nonprofit agencies, organizations, or institutions.

(b) Only the following are eligible to apply for a grant to operate an adult education project for Indochina refugees:

(1) State educational agencies.

(2) Local educational agencies.

(Secs. 318, 317; 20 U.S.C. 1211c, 1211b)

Subpart B—Kinds of Projects the Department May Assist Under These Programs

§ 432.211 What is a special adult education project for immigrants or Indochina refugees?

The Secretary funds projects that—

(a) Enable adult immigrants or adult Indochina refugees to acquire basic skills necessary to function in American society; and

(b) Contribute to the employability of adult immigrants or adult Indochina refugees through development of basic educational and occupational skills.

(Secs. 318, 317; 20 U.S.C. 1211c, 1211b)

§ 432.212 What are eligible activities under the special adult education programs for immigrants and Indochina refugees?

Grants awarded under section 318 or 317 of the Act may be used for—

(a) Programs of instruction (including administrative costs of planning and operating these programs) for adult immigrants or Indochina refugees for the purpose of enabling these adults to become employable and productive members of American society. These programs of instruction may be in English as a second language, basic reading, mathematics, the promotion of language and literacy skills in English, and the development and enhancement of necessary skills, such as consumer, social, survival, occupational, and communication skills.

(b) (1) Adult education programs designed to operate in conjunction with existing Federal and non-Federal programs and activities to develop occupational and related skills for adult immigrants or Indochina refugees, particularly programs authorized under the Comprehensive Employment and Training Act of 1973 (20 U.S.C. 801) or under the Vocational Education Act of 1963, as amended (20 U.S.C 1241).

(2) Where occupational skills programs are otherwise unavailable or insufficient, combined occupational-adult education programs to provide adult immigrants or Indochina refugees with skills necessary to their obtaining employment;

(c) Programs providing educational support services that meet the needs of adult immigrants or Indochina refugees, including but not limited to (1) tutoring (in the case of geographically isolated adult immigrants or Indochina refugees) and (2) guidance and counseling with regard to educational, career, and employment opportunities (such as job placement and job follow-up services); or

(d) Any combination of programs described in paragraphs (a), (b), and (c) of this section.

(Secs. 318(a), 317(a); 20 U.S.C. 1211c, 1211b)

§ 432.213 What is the special population to be served by a project?

(a) Only adult immigrants, as defined in § 425.4(d)(3) of these regulations, are eligible to participate in projects funded under the adult education program for immigrants.

(b) (1) Except as provided in paragraph (b)(2) of this section, only adult Indochina refugees, as defined in § 425.4(d)(4) of these regulations, are eligible to participate in a project assisted under the adult education program for Indochina refugees. An eligible participant is any Indochina adult refugee who—

(i) Has parole status, as indicated by an INS (Immigration and Naturalization Service) Form I-94;

(ii) Has voluntary departure status, as indicated by INS Form I-94;

(iii) Has conditional entry status, as indicated by INS Form I-94;

(iv) Was admitted to the United States with permanent resident status on or after April 8, 1975 (the date on which the President designated Vietnamese and Cambodians to be refugees under the Migration and Refugee Assistance Act), as indicated by INS Form I-151 or I-551; or

(v) Has permanent resident status as a result of adjustment of status under Pub. L. 95-145, as indicated by INS Form I-151 or I-551.

(Pub. L. 95-145, 8 U.S.C. 1255)

(2) Participation of a very limited number of adults other than Indochina refugees is not precluded where the special needs of the Indochina refugees, as included in the application,

are being met. This participation of non-Indochina refugees shall not result in a reduction in the quality or quantity of services to the special population as described in paragraph (b)(1) of this section.

(Secs. 318, 317; 20 U.S.C. 1211c, 1211b)

Subpart C—How to Apply for a Grant

§ 432.221 What must an application for a grant contain?

An application shall contain—

(a) Information required by the Notice of Closing Date published in the FEDERAL REGISTER;

(b) Information that meets the application content requirements of 34 CFR 75.108 through 75.116 of EDGAR; and

(c) Any additional information required by the Secretary in the application package.

(Secs. 318, 317; 20 U.S.C. 1211c, 1211b)

§ 432.222 State review of applications.

(a) (1) An applicant for a grant under the adult education program for immigrants shall first submit a copy of its application to the State educational agency (for the State in which that applicant is located). The State educational agency shall expeditiously review the application in accordance with the provisions of 34 CFR 75.156 through 75.159 of EDGAR.

(2) The State educational agency shall include in its comments submitted to the Secretary whether the application is consistent with the State plan's objectives for meeting the adult education needs of adult immigrants.

(3) The State educational agency shall provide a copy of its comments and recommendations to the applicant.

(b) (1) The Secretary does not approve an application for a grant under the adult education program for Indochina refugees unless the State educational agency (for the State in which that applicant is located) assures the Secretary that the proposed activity will not duplicate existing and available (Federal and non-Federal) adult education programs that meet the special needs of adult Indochina refugees.

(2) An applicant shall submit a copy of its application to its State educational agency in accordance with the provisions of 34 CFR 75.156 through 75.159 of EDGAR.

(Secs. 318, 317; 20 U.S.C. 1211c, 1211b)

§ 432.223 What is the duration of Federal support?

(a) A grant period is normally for twelve months but in no event shall it exceed eighteen months.

(b) Projects may be approved for a multi-year period.

(Secs. 318, 317; 20 U.S.C. 1211c, 1211b)

Subpart D—How a Grant is Made

§ 432.231 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 432.232 of these regulations.

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses after the heading for that criterion.

§ 432.232 What selection criteria does the Secretary use?

(a) *Plan of operation* (20 points).

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program; and

(iv) The way the applicant plans to use its resources and personnel to achieve each objective.

(b) *Quality of key personnel* (15 points).

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness* (5 points).

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan* (5 points).

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590 of EDGAR—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources* (10 points).

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Addressing language and cross-cultural needs* (10 points).

(1) The Secretary reviews each application for information that shows that the applicant plans to emphasize developing oral and aural English language proficiency.

(2) The Secretary looks for information that shows—

(i) The use of the best available English language instruction as supported by current valid research findings;

(ii) The use of trained instructional personnel who are native speakers of English or who possess near-native fluency in English; and

(iii) The provision for bilingual personnel and materials in all aspects of the program.

(3) The Secretary looks for information that demonstrates the applicant's understanding of the cultures of the various immigrant and Indochinese groups served by the programs.

(g) *Need* (10 points.)

(1) The Secretary reviews each application for information that shows the need for the proposed educational activity.

(2) The Secretary looks for information that shows—

(i) Specific evidence of the need;

(ii) Where appropriate, current and planned activities in the community relative to the need; and

(iii) Reasonable assurance that the population group to whom the project is addressed will participate in the project if it is available.

(h) *Reaching the geographically isolated* (5 points).

The Secretary reviews each application for information that shows that the applicant plans to meet the educational needs of previously unserved adult immigrants or adult Indochina refugees living in isolated geographic areas.

(i) *Cooperative arrangements* (20 points).

(1) The Secretary reviews each application for information that clearly describes cooperative arrangements and support services to be provided by

existing agencies, in order to maximize the impact of the proposed project.

(2) The types of agencies with which cooperative arrangements are encouraged include, but are not limited to: Voluntary agencies; sponsor groups; public assistance agencies; social/vocational rehabilitation services; business and industry; social organizations; health services; legal aid; and other agencies operating State and local educational, employment, and training programs.

(20 U.S.C. 1221e-3(a)(1); Secs. 318, 317; 20 U.S.C. 1211c, 1211b)

Subpart E—Conditions That Must Be Met by a Grantee

§ 432.241 What are the cost requirements under these programs?

(a) Allowable costs under grants awarded under the adult education programs for immigrants and Indochina refugees are determined in accordance with the applicable cost principles of 34 CFR 75.530 through 75.534 of EDGAR and Subpart Q of 34 CFR Part 74.

(b) No cost sharing is required.

(c) Neither stipends nor dependency allowances are allowable.

(d) The cost of day care, not to exceed 5 percent of the grant award, may be allowed only if the applicant can demonstrate that—

(1) The absence of this service is a barrier to providing effective educational services; and

(2) The services of volunteers or other community agencies are not available for this purpose.

(e) A grantee may not, under any circumstances, make payments for day care directly to participants.

(f) Transportation costs of participants are allowable up to one percent of the grant award. If more than one percent is necessary, the applicant shall include in its application a justification demonstrating exceptional need.

(g) The cost of developing curriculum materials is allowable up to one percent of the grant award. If more than one percent is necessary, the applicant shall include in its application a justification demonstrating that appropriate materials do not exist or cannot be obtained from existing sources.

(h) The cost of pre-service or in-service training of personnel is allowable up to 5 percent of the grant award. If more than 5 percent is necessary, the applicant shall include in its application a justification demonstrating that the required competence is not otherwise available on a cost-effective basis.

(i) Projects combining funds under the adult education programs for immigrants or Indochina refugees with other Federal, State, or local funds shall contain provisions for separate accounting.

(Sec. 318, 317; 20 U.S.C. 1211c, 1211b)

§ 432.242 What records and reports are required of the grantee?

(a) A grantee shall keep records that meet the requirements in 34 CFR 75.730 through 75.734 of EDGAR.

(b) A grantee shall submit reports as part of the financial and performance reporting requirements in 34 CFR 75.720 of EDGAR and Subparts I and J of 34 CFR Part 74.

(Sec. 318, 317; 20 U.S.C. 1211c,1211b)

PART 440—COMMUNITY SCHOOLS AND COMPREHENSIVE COMMUNITY EDUCATION PROGRAM

Subpart A—General

Sec.
440.1 Description of the Community Education Act.
440.2 Regulations that apply to the Community Education Act.
440.3 Definitions.
440.4 What are the minimum elements of a community education program?
440.5 How are the minimum elements of a community education program applied?
440.6 Scope of eligible project activities.
440.7 Allowable costs: Costs related to administration.
440.8 Limitations on costs.
440.9 Non-Federal contribution for related Federal programs.

AUTHORITY: Title VIII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561, 92 Stat. 2284, (20 U.S.C. 3281), unless otherwise noted.

SOURCE: 45 FR 22702, Apr. 3, 1980, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

Effective Date Note: At 46 FR 42848, Aug. 25, 1981, Part 440 was removed effective Oct. 1, 1982.

Subpart A—General

§ 440.1 Description of the Community Education Act.

(a) *General purpose.* The Community Education Act provides assistance to State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education, public agencies and nonprofit private organizations to support the costs of planning, establishing, expanding, and operating community education programs.

(b) *Specific purposes.* The purposes of the Act are to—

(1) Assure involvement of citizens in local and State community education efforts;

(2) Encourage the provision in school facilities of services funded under other Federal, State, and local programs;

(3) Encourage efficient use of schools and other public buildings;

(4) Develop capacity within States to support the continued growth of community education; and

(5) Encourage the coordination of community and human services and eliminate duplication and fragmentation of these services in State and local communities.

(c) *Types of projects.* The Community Education Act provides for—

(1) Grants to SEAs to administer State Community Education Programs described under the heading "Community Education—State Program";

(2) Grants to LEAs for projects described under the heading "Grants to Local Educational Agencies";

(3) Grants to or contracts with public agencies and nonprofit private organizations for profits described under the heading "Grants to Public Agencies and Nonprofit Private Organizations"; and

(4) Grants to institutions of higher education for projects described under the heading "Training Grants to Institutions of Higher Education".

(Sec. 802; 20 U.S.C. 3282)

§ 440.2 Regulations that apply to the Community Education Act.

(a) *Regulations that apply to the State formula program.* The following regulations apply to grants and subgrants under the State Community Education Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-Administered Programs) and 34 CFR Part 77 (Definitions).

(2) The regulations in Subpart A (General) and under the heading, "Community Education—State Program" in this part.

(b) *Regulations that apply to direct grant programs.* The following regulations apply to grants under the Community Education Act other than grants and subgrants under the State Community Education Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (Definitions).

(2) The regulations in this part, as applicable, except those for the Community Education—State Program.

(c) *Procurement contracts.* The regulations in this part do not apply to procurement contracts under the Community Education Act. These contracts are subject to—

(1) Federal and ED procurement regulations in 41 CFR Chapters 1 and 3; and

(2) Requirements and criteria in particular requests for proposals published in Commerce Business Daily.

(Sec. 801; 20 U.S.C. 3281)

§ 440.3 Definitions.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Secretary
Elementary school
Grant
Institution of higher education
Local educational agency (LEA)
Nonprofit
Nonpublic
Private
Project

Public agency
Secondary school
State
State educational agency (SEA)
Subgrant

(b) *Program-specific definitions.* The following definitions apply specifically to this Part:

"Act" or "Community Education Act" means the Community Schools and Comprehensive Community Education Act of 1978, Title VIII of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978 (Pub. L. 95-561).

"Program" means a community education program that meets each of the minimum elements in § 440.4.

"Public facility" means a facility owned by any department or branch of a State, county, or municipal government.

"State Community Education Program" refers to the State formula program funded under Section 808 of the Act.

(Sec. 8012; 20 U.S.C. 3281)

§ 440.4 What are the minimum elements of a community education program?

In order to be considered for a grant under the Act, each community education program must have the following minimum elements:

(a) *Role of the local educational agency.*

(1) An LEA shall be involved directly and substantially in administering and operating the program.

(2) However, an LEA is not required to be solely responsible for administering and operating the program.

(b) *Community served.* The program shall serve an identified community. The community shall include, but need not be limited to, the attendance area for the regular instructional program of the schools of the LEA involved in administering and operating the program.

(c) *Community center*—(1) *Facilities.* (i) A public facility—such as a public elementary or secondary school or a public community college or junior college center—shall serve as a community center.

(ii) The community center may use satellite or mobile facilities to provide program activities and services. The satellite or mobile facilities may be nonpublic facilities that are made available for use by the public.

(2) *Scope of services and their relationship to regular instructional program.* To be a community center, the public facility shall offer educational, recreational, health care, cultural, and other related community and human services that—

(i) To the extent possible, are broad in their scope and nature. Program services may not be restricted to one or a limited number of program areas such as recreation or adult education, or to one or a limited number of groups of persons in the community;

(ii) To the extent possible, reinforce the regular instructional program of the elementary or secondary school(s) of the LEA involved in administering and operating the program; and

(iii) Extend the services offered by the public facility and the uses made of it by serving more groups or persons, lengthening the hours of service, and broadening the scope and nature of services.

(d) *Community needs.* The program shall include systematic and effective procedures—

(1) For identifying and documenting on a continuing basis the needs, interests, and concerns of the community served with respect to community education activities; and

(2) For responding to those needs, interests, and concerns.

(e) *Community resources and interagency cooperative arrangements.* (1) The program shall identify and use educational, cultural, recreational, and other existing and planned resources located outside of the school or other public facility—including, but not limited to, services of volunteers—to enhance the size and quality of the program.

(2) The program shall be designed to encourage cooperation among public and private agencies to—

(i) Make maximum use of existing talents and resources; and

(ii) Avoid, to the extent feasible, duplication of services.

(3) An LEA that plans, directs, or operates a program under this part shall show evidence of cooperation between

the LEA and any other public agency conducting a similar program or activity.

(f) *Program clients.* The program shall be designed to serve—

(1) All age groups in the community, including preschool children, children and youth, adults, and senior citizens; and

(2) Groups within the community with special needs for community education activities, such as persons of limited English-speaking ability, mentally or physically handicapped persons, or other groups of persons.

(g) *Community involvement in governance.* (1) In order to meet the needs, interests, and concerns of the population to be served, the program shall be planned and operated in cooperation with the community.

(2) The program shall provide for active and continuous involvement on an advisory basis of—

(i) Individuals, institutions and groups representative of the community, and

(ii) Parents of school children—in planning, development and implementation of programs.

(Secs. 802, 803; 20 U.S.C. 3282, 3283)

§ 440.5 How are the minimum elements of a community education program applied?

(a) Each community education program shall—

(1) Already meet all of the minimum elements specified in § 440.4; or

(2) Be able to meet all of these minimum elements with the assistance provided under the project.

(b) The minimum elements apply to each community education program assisted under the project rather than to the project as a whole. However, the overall local project designed to plan, establish, expand, or operate these programs may be administered in a central office of the LEA.

(Secs. 802, 803; 20 U.S.C. 3282, 3283)

§ 440.6 Scope of eligible project activities.

(a) *General rule.* A community education program may include some or all of the types of activities and services specified in Section 807 of the Act including—

(1) Educational, cultural, recreational, health care, and other related community and human services, whether or not in the form of formal courses;

(2) Activities making the school or other public facilities and equipment available for use by public agencies and private nonprofit organizations, individuals and groups in the community;

(3) Preventive health, dental care, and nutrition;

(4) Special programs for particular target groups, such as older persons;

(5) Services designed to eliminate the high incidence of suspension, expulsion, and other disciplinary action involving chronically maladjusted students;

(6) Services for students who withdraw from school before completing secondary school requirements, regardless of age or time of withdrawal;

(7) Services for mentally or physically handicapped individuals or other health impaired individuals;

(8) Rehabilitation purposes for juvenile and adult offenders;

(9) Parent education for care, development, and education of handicapped children;

(10) Training programs in institutions of higher education for the purpose of assisting full-time training for personnel who are engaged in or who intend to engage in community education programs;

(11) Specialized high schools or schools within schools organized around particular interest such as the arts, or using flexible scheduling and summer learning programs to take into account special needs of students, or creating interrelationships between secondary schools and such community resources as museums, cultural centers, and institutions of higher education;

(12) Development of means to use technology to improve the relationship between the school, the home, and community resources such as libraries, museums, and cultural centers;

(13) Early childhood and family education grants for programs operated by State and local educational agencies and public and private, nonprofit agencies or organizations for children

below age six, which may include identification of potential barriers to learning, education of parents in child development, family services, education for parenthood programs and referral services; and

(14) Leisure education.

(Sec. 807, 20 U.S.C. 3287)

(b) *Federal share.* The project to which the Federal share is applied includes activities of planning, establishing, expanding, and operating a community education program that meets or is making progress toward meeting the requirements in § 440.4.

§ 440.7 Allowable costs: Costs related to administration.

Allowable costs of a project include leadership, coordinating, administrative, and technical assistance activities involved in planning, establishing, expanding, or operating one or more community education programs. These activities may include but are not limited to—

(a) Employing a community education administrator and the administrator's staff;

(b) Training for the administrator and appropriate members of the administrator's staff, the grantee's chief executive officer and appropriate members of that staff;

(c) Scheduling services and activities;

(d) Assessing community needs and interests;

(e) Recruiting program participants and administrative and instructional staff;

(f) Disseminating information to the community and to other interested persons and organizations;

(g) Obtaining community participation in planning and carrying out the program;

(h) Organizing and training community education task forces or advisory councils and assisting them to plan and carry out their activities;

(i) Budgeting and managing the program;

(j) Identifying and obtaining the participation of other community service providers;

(k) Planning and developing the program;

(l) Evaluating the program, including any outside evaluation of the program;

(m) Coordinating the community education program activities and services throughout the community;

(n) Obtaining technical assistance to carry out these activities; and

(o) Providing training and technical assistance to other projects.

§ 440.8 Limitations on costs.

(a) The following costs are allowable only if the conditions in paragraph (b) of this section, are met:

(1) Instructional salaries, materials, and equipment; and

(2) Other expenses directly related to the provision of specific community education program activities and services—such as course offerings and transportation for participants.

(b) These costs are allowed only if—

(1) Other public or private resources are unavailable;

(2) The charging of enrollment fees to program participants to cover these costs is not feasible or would create an excessive financial burden on potential program participants; and

(3) The proposed costs are reasonable in terms of the contributions which they will make to the purposes of the community education program.

(Secs. 803, 807; 20 U.S.C. 3283, 3287)

§ 440.9 Non-Federal contribution for related Federal programs.

(a) An SEA or LEA that receives funds under the Act for a community education program may use the fair value of the program as part of or all of the non-Federal contribution that is required under any program listed in paragraph (b) of this section, if both of the following conditions are met:

(1) A portion of any of those programs listed in paragraph (b) of this section is implemented in a building in which a community education program assisted under this Act is conducted; and

(2) There is a necessary and direct relation between the portion of the program in paragraph (b) of this section and any element of the community education program assisted under this Act.

(b) Programs referred to in paragraph (a) of this section include those under:

(1) The Public Health Service Act;

(2) The Headstart-Follow Through Act;

(3) Title XX of the Social Security Act, relating to child care, day care, and other services;

(4) The youth employment demonstration programs authorized under the Comprehensive Employment and Training Act;

(5) The Older Americans Act of 1965;

(6) The Vocational Education Act of 1963;

(7) The Adult Education Act;

(8) Titles I and X of the Higher Education Act of 1965; relating to community services, continuing education programs, and community college programs;

(9) Titles I through IV and Titles VI through IX of the Economic Opportunity Act of 1964 (also known as the Community Services Act of 1974);

(10) The Legal Services Corporation Act;

(11) Safe Streets and Omnibus Crime Control Act of 1968;

(12) Science education programs assisted under the National Science Foundation Act of 1950;

(13) The Rehabilitation Act of 1973; and

(14) Such other community service programs as the Assistant Secretary of Education deems appropriate.

(Section 806; 20 U.S.C. 3286)

PART 441—COMMUNITY EDUCATION—STATE PROGRAM

Subpart A—General

Sec.

441.1 What general provisions apply to this program?

Subpart B—What Kinds of Activities Are Eligible for Funding Under the State Community Education Program?

441.10 Purpose of State grants.
441.11 Eligible activities.
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Sec.

Subpart C—How Does a State Apply for a Grant?

441.20 Documents a State must submit to receive a grant.
441.21 Assistance to community education programs.
441.22 Use of funds.
441.23 Expanding community education programs.
441.24 Distribution of funds.
441.25 Evaluation procedures.
441.26 Other State plan provisions.
441.27 Ten-year plan.

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Subpart A—General

§ 441.1 What general provisions apply to this program?

The provisions of Subpart A of 34 CFR Part 440, §§ 440.1 through 440.9, apply to the State Community Education Program under this part.

Subpart B—What Kinds of Activities Are Eligible for Funding Under the State Community Education Program?

§ 441.10 Purpose of State grants.

The general purpose of the State Community Education Program is to assure capacity building in the State to support continued development of community education and attain greater State responsibility for this development within the five-year period of authorization of the Act. Specific purposes of the State Community Education Program are described in 34 CFR 440.1 (Description of the Community Education Act).

(Sec. 808, 20 U.S.C. 3288)

§ 441.11 Eligible activities.

(a) The Secretary funds SEAs—

(1) To provide financial assistance, through subgrants, to LEAs to plan,

establish expand, and operate community education programs;

(2) To administer a State plan governing the community education program;

(3) To provide technical assistance, coordination, and information services; and

(4) To carry out dissemination activities, including conferences, among community education programs in the State.

(b) Any State may apply for a grant to support community education programs that meet or are making progress toward meeting each of the minimum elements in 34 CFR 440.4. This includes the development of new community education programs that will meet these minimum elements.

(Sec. 804; 20 U.S.C. 3284)

§ 441.12 Duration of grants.

Each State plan will be effective for a period of three fiscal years. The budget period is 12 months.

(Sec. 804; 20 U.S.C. 3284)

Subpart C—How Does a State Apply for a Grant?

§ 441.20 Documents a State must submit to receive a grant.

To receive a grant—a State through its SEA shall submit to—or have on file with, the Secretary—

(a) A general application that complies with the requirements—including the assurances—of section 435 (single State application) of the General Education Provisions Act; and

(b) A State plan that complies with the requirements in 34 CFR 441.21 through 441.27. The State plan need not be submitted more often than once every three years. EDGAR establishes the rules for this in 34 CFR 76.103.

(Sec. 808(a); 20 U.S.C. 3288(a))

§ 441.21 Assistance to community education programs.

In its plan a State shall provide information to document that—

(a) Specific LEA community education programs that are assisted with funds distributed by the State under the State Community Education Program meet or will make substantial progress toward meeting the minimum elements in § 440.4; and

(b) Funds received by the State under the State Community Education Program and reserved for administrative activities—including technical assistance to LEAs—will relate to the development of community education programs that meet these minimum elements.

(Secs. 803, 808(a)(4)-(7); 20 U.S.C. 3283, 3288(a)(4)-(7))

§ 441.22 Use of funds.

(a) In its plan a State shall explain procedures to ensure that funds received under the State Community Education Program will be used only to pay the Federal share of the eligible costs described in 34 CFR 440.6 (Scope of eligible project activities). Sufficient information must be provided with respect to—

(1) Activities carried out at the State level by the SEA; and

(2) Projects carried out locally with funds distributed by the State among LEAs within the State.

(Secs. 803, 804, 807; 20 U.S.C. 3283, 3284, 3287)

§ 441.23 Expanding community education programs.

(a) *General.* In its plan a State shall furnish evidence that, to the extent practicable, funds under the State Community Education Program will be used to expand community education programs of the schools of LEAs within the State.

(b) *Expansion activities.* Expanding community education programs includes—

(1) Planning and establishing new community education programs; and

(2) Enlarging the scope of existing community education programs by—

(i) Increasing the number and types of services offered in these programs in response to community needs and interests;

(ii) Increasing the number of community residents, agencies, and organizations that participate in planning and implementing the programs, and improving the quality of that participation; or

(iii) Increasing the time during which public facilities are used in the programs.

(c) *State-wide assessment.* To satisfy paragraph (a) of this section, the State in its plan shall—

(1) Furnish evidence that the SEA has carried out, and describe the manner in which it has carried out, an assessment to identify—

(i) Existing and planned community education programs throughout the State;

(ii) The locations with the strongest interest in and need for new community education programs;

(iii) Resources available to plan, establish, expand or operate community education programs throughout the State; and

(2) Describe the results of the assessment and the standards for selecting community education programs for funding based on this assessment.

(Sec. 808(a)(1); 20 U.S.C. 3288(a)(1))

§ 441.24 Distribution of funds.

(a) *Distribution.* In its plan a State shall describe procedures for distributing among LEAs within the State 80 percent of the funds it receives for community education programs.

(b) *Standards.* The State plan must describe the standards and procedures for distributing these funds to LEAs—

(1) Considering the size of the population to be served by the community education programs of each LEA; and

(2) To achieve—

(i) Expansion of community education programs;

(ii) Assistance to existing or proposed community education programs of the highest quality; and

(iii) The most effective use of resources to meet community education needs throughout the State.

(Sec. 808(a)(3); 20 U.S.C. 3288(a)(3))

§ 441.25 Evaluation procedures.

(a) In its plan a State shall describe procedures to evaluate annually the effectiveness of—

(1) Community education programs that receive financial and technical assistance under the State Community Education Program; and

(2) If possible, LEA programs receiving financial assistance under section 809 of the Act.

(b) The State plan must describe—

(1) The specific criteria to be used in assessing the effectiveness of community education programs;

(2) The evaluation instruments to be used, or how they will be developed or selected; and

(3) The results of the most recently completed evaluation.

(Sec. 808(a)(11); 20 U.S.C. 3288(a)(11))

§ 441.26 Other State plan provisions.

In its plan a State shall assure that—

(a) *State administration.* The State will meet the requirements in Section 808(a)(10) of the Act with regard to the reservation of 15 percent of the funds under the State allotment for the specified administrative activities of the SEA;

(b) *Remaining funds.* The SEA will use the remaining 5 percent of the funds under the State allotment—after awarding 80 percent to LEAs and reserving 15 percent under paragraph (a) of this section—to train and provide technical assistance to SEA personnel, other State agencies and State community education advisory councils for the purpose of enhancing State community education activities.

(c) *Cost-sharing.* The State will meet the requirements of Section 808(a)(9) of the Act concerning payment from non-Federal sources for the remaining costs of carrying out the State plan.

(Sec. 808(a)(9), (10); 20 U.S.C. 3288(a)(9), (10))

§ 441.27 Ten-year plan.

(a) *General.* In its plan a State shall assure that, after consulting with appropriate State agencies, it will develop a ten-year plan for coordinating community education programs with all relevant community services, including but not limited to State and local recreation authorities and associations.

(b) *Specific information in the State plan.* The State plan must include the following information on the ten-year coordination plan:

(1) A specific timeline for its development, adoption, and implementation; and

(2) The agencies—including their relationship with the SEA—with which the State will consult in developing and carrying out the plan and the basis for including those agencies.

(c) *Completion, implementation.* The State shall complete its ten-year coordination plan no later than two years after the State receives its first grant under the State Community Education Program.

(Sec. 808(a)(2); 20 U.S.C. 3288(a)(2))

PART 442—COMMUNITY EDUCATION—GRANTS TO LOCAL EDUCATIONAL AGENCIES

Subpart A—General

Sec.
442.1 What general provisions apply to this program?

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Subpart D—How Is a Grant Made?

442.30 How the Secretary evaluates an application from a local educational agency.
442.31 Criteria for evaluating applications.

Subpart E—What Conditions Must be Met by a Grantee?

442.40 Cost sharing.

AUTHORITY: Title VIII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561, 92 Stat. 2284 (20 U.S.C. 3281), unless otherwise noted.

SOURCE: 45 FR 22706, Apr. 3, 1980, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

EFFECTIVE DATE NOTE: At 46 FR 42848, Aug. 25, 1981, Part 442 was removed effective Oct. 1, 1982.

Subpart A—General

§ 442.1 What general provisions apply to this program?

The provisions of Subpart A of 34 CFR Part 440, §§ 440.1 through 440.9, apply to the Community Education—Local Educational Agencies program under this part.

Subpart B—What Kinds of Projects Does the Department Fund Under This Program?

§ 442.10 Eligible projects.

The Secretary awards direct grants to LEAs for the Federal share of the costs of planning, establishing, expanding, and operating community education programs.

(Sec. 809; [illegible] U.S.C. 3289)

§ 442.11 Purpose of projects.

(a) *General purpose.* The Secretary funds LEA projects that have the greatest potential for national impact. These projects must show promise for advancing community education by developing exemplary approaches, methods, or information that could be replicated by other LEAs throughout the Nation.

(b) *Eligible activities.* A project shall include the activities described under 34 CFR 440.6 (Scope of eligible project activities).

(Sec. 807, 809; 20 U.S.C. 3287, 3289)

§ 442.12 Project period.

Approval of a project for more than a year and the award of continuation grants within the project period are covered in 34 CFR 75.250-75.254 of EDGAR.

(Sec. 809; 20 U.S.C. 3289)

Subpart C—How Does an Applicant Apply for a Grant?

§ 442.20 Application requirements.

(a) The Secretary considers making a grant to an LEA only if it submits an application meeting the requirements under 34 CFR Part 75, Subpart C of EDGAR and any additional requirements that may be specified in the annual notice inviting applications.

(Sec. 809; 20 U.S.C. 3289)

(b) An application from an LEA must contain a certification that the LEA has held an open meeting regarding the contents of its application, to comply with the requirements of EDGAR, 34 CFR 75.138-75.141.

(20 U.S.C. 3386; 887(e))

§ 442.21 State review of local educational agency applications.

(a) The Secretary does not approve an application submitted by an LEA unless the SEA of the State in which that LEA is located has been given an opportunity to review and comment on the application.

(b) The procedures for this review and comment are described in 34 CFR 75.155 through 75.159 of EDGAR.

(Sec. 809(b); 20 U.S.C. 3289(b))

Subpart D—How Is a Grant Made?

§ 442.30 How the Secretary evaluates an application from a local educational agency.

(a) The Secretary evaluates an application on the basis of the criteria in § 442.31.

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses at the end of that criterion.

(d) Among projects judged to be relatively equal in quality (within 15 points), the Secretary may select a project to—

(1) Ensure that a diversity of approaches are funded to meet a variety of community education needs throughout the country; and

(2) Avoid duplicating the activities of a currently funded project.

(Sec. 809, 20 U.S.C. 3289)

§ 442.31 Criteria for evaluating applications.

The Secretary evaluates an application from an LEA on the basis of the criteria in this section. The maximum possible score for all criteria is 100 points. The maximum possible score for each complete criterion is indicated in parentheses at the end of that criterion.

(a) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly. (10 points)

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers

evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides. (7 points)

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project. (5 points)

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590 of EDGAR—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable. (5 points)

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate. (3 points)

(f) *Quality of community education programs.* The quality of the existing or planned community education programs involved in the project in meeting all the minimum elements in § 440.4. In applying this criterion, the Secretary focuses particularly on—

(1) *School involvement.* (i) The extent to which the local boards of education are involved in program administration and their commitment to the support and improvement of the program;

(ii) Mutual reinforcement, to the extent feasible, between the regular instructional program of the school and community education activities and services; and

(iii) Maximum use of existing school facilities;

(2) *Needs and Services.* (i) The extent to which the program provides services and activities that respond to identified local needs; and

(ii) The extent to which the applicant recognizes and resolves geographic and other constraints to potential participation in the program;

(3) *Agency coordination.* The adequacy of arrangements to—

(i) Achieve maximum coordination and cooperation among public and private agencies;

(ii) Use existing resources—including arrangements to link the program with programs listed in Section 806 of the Act; and

(iii) Avoid duplication in service delivery; and

(4) *Community participation.* The extent of community participation in all aspects of the program, including needs and resource assessment, application preparation, and implementing and evaluating the program. (30 points)

(g) *Potential for advancing community education.* The project's potential for advancing community education nationally. In applying this criterion, the Secretary considers the quality of the project in developing any one or a combination of the following:

(1) *Citizen involvement.* The degree to which the project develops exemplary methods of citizen involvement in the governance of a community education program.

(2) *Use of resources.* The degree to which the project develops exemplary methods for the efficient and effective use of human and material resources.

(3) *Incorporating community education.* The degree to which the project develops exemplary methods of incorporating community education as an integral part of an LEA and building long-term support for community education. (30 points)

(h) *Evaluation and potential for replication.* The degree to which the project's results will be evaluated and the degree to which the project is replicable. In applying this criterion, the Secretary considers—

(1) Whether there is a proposed plan for having the project evaluated;

(2) The proposed use of quantifiable data to measure the extent to which the project achieves its objectives; and

(3) Provisions to develop from the project usable information—including characteristics, practices, procedures, and materials—capable of being disseminated to a broad national audience or to a special client population. (10 points)

(Sec. 809; 20 U.S.C. 3289)

Subpart E—What Conditions Must be Met by a Grantee?

§ 442.40 Cost sharing.

(a) An LEA that receives a grant shall meet the cost sharing requirement in Section 815(b) of the Act.

(b) The Federal share of the cost of a project is 90 percent for fiscal years 1979 and 1980, and 80 percent for fiscal years 1981, 1982, and 1983.

(c) Cost sharing is subject to the requirement in 34 CFR Part 74, Subpart G.

(Sec. 815(b); 20 U.S.C. 3295(b))

PART 443—COMMUNITY EDUCATION—GRANTS TO PUBLIC AGENCIES AND NONPROFIT PRIVATE ORGANIZATIONS

Subpart A—General

Sec.
443.1 What general provisions apply to this program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

443.10 Who is eligible to apply under this program?
443.11 What kinds of projects does the Secretary assist?
443.12 State educational agency projects.
443.13 Projects of other public agencies and nonprofit private organizations.
443.14 Project period.

Subpart C—How Does an Applicant Apply for a Grant?

443.20 Application requirements.
Sec.

Subpart D—How Is a Grant Made?

443.30 How the Secretary judges applications from public agencies and nonprofit private organizations.
443.31 Criteria for evaluating applications from State educational agencies.
443.32 Criteria for evaluating applications from other public agencies and nonprofit private organizations.

Subpart E—What Conditions Must be Met by a Grantee?

443.40 Cost sharing.

AUTHORITY: Title VIII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561, 92 Stat. 2284 (20 U.S.C. 3281), unless otherwise noted.

SOURCE: 45 FR 22708, Apr. 3, 1980, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

EFFECTIVE DATE NOTE: At 46 FR 42848, Aug. 25, 1981, Part 443 was removed effective Oct. 1, 1982.

Subpart A—General

§ 443.1 What general provisions apply to this program?

The provisions of Subpart A of 34 CFR Part 440, §§ 440.1 through 440.9, apply to the Community Education—Grants to Public Agencies and Nonprofit Private Organizations program under this part.

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 443.10 Who is eligible to apply under this program?

The Secretary may make grants to or contracts with public agencies—including a separate grant category to SEAs—and nonprofit private organizations.

§ 443.11 What kinds of projects does the Secretary assist?

(a) *Purpose of projects.* The Secretary makes grants to encourage the use of school facilities and other public facilities for the efficient and coordinated delivery of community services in community education programs or in other activities described in Section 806(b) of the Act, and 34 CFR 440.7(b) of the regulations.

(b) *Notice of funding reservations.* The Secretary publishes a notice periodically in the FEDERAL REGISTER inviting applications for the program and notifying prospective grant applicants of—

(1) Activities to be carried out by contracts; and

(2) The amount of funds reserved for grants to SEAs and to other public agencies and nonprofit private organizations.

(c) *Non-duplication.* The Secretary does not award a grant to support activities that duplicate any activities that the Secretary funds through a contract under the program. For example, if the Secretary awards a contract to involve parks and recreation agencies in program activities, the Secretary does not award a grant for these activities.

(Sec. 810; 20 U.S.C. 3290)

§ 443.12 State educational agency projects.

Grants to SEAs are designed to achieve the purposes in § 440.1(b). A grant supports an SEA in—

(a) Developing and carrying out State-level planning and interagency coordination and statewide dissemination; and

(b) Providing developmental and technical assistance to one or more specific community education programs administered by an LEA or to one or more coordinated programs under Section 806(b) of the Act.

(Sec. 810; 20 U.S.C. 3290)

§ 443.13 Projects of other public agencies and nonprofit private organizations.

(a) *General.* The Secretary awards grants to public agencies other than SEAs and to nonprofit private organizations to encourage the use of school facilities and other public facilities for—

(1) Community education programs; and

(2) The improvement and development of exemplary procedures to coordinate delivery of community and human services in these facilities.

(b) *National significance.* The Secretary awards grants only to projects that have the potential of furthering community education purposes nationally. A project may have this potential because either—

(1) The activities under the project are national in scope; or

(2) The project involves a particularly innovative or exemplary idea or approach that is worthy of being replicated at other sites or by other organizations throughout the Nation.

(c) *Specific types of projects.* Eligible activities include coordination, sharing of information, technical assistance, and training. A project may focus on—

(1) Training a particular national, regional, or statewide group interested in community education or in the coordinated delivery of community and human services in schools and other public facilities;

(2) Developing working relationships between two or more of these groups; or

(3) Developing, testing, and disseminating exemplary models of local activities to promote improved coordination of community and human services in schools and other public facilities.

(Sec. 810; 20 U.S.C. 3290)

(d) *Outcomes.* Each proposed project shall provide for—

(1) *Evaluation.* An evaluation of the effectiveness of the project, including evaluative reports and products that describe the project, its results, and an analysis of its impact on community education.

(2) *Information.* The development of information that is useful in training others or for distribution to interested persons; and

(3) *Dissemination.* Methods to distribute nationally to all interested parties materials developed as a result of the project.

(Sec. 810; 20 U.S.C. 3290)

§ 443.14 Project period.

The provisions in 34 CFR 442.12 concerning project duration apply to grants to SEAs, other public agencies, or nonprofit private organizations.

(Sec. 810; 20 U.S.C. 3290)

Subpart C—How Does an Applicant Apply for a Grant?

§ 443.20 Application requirements.

The application requirements described in § 442.20 apply to this program.

(Sec. 810; 20 U.S.C. 3290)

Subpart D—How Is a Grant Made?

§ 443.30 How the Secretary judges applications from public agencies and nonprofit private organizations.

(a) The Secretary evaluates an application on the basis of the criteria in §§ 443.31 or 443.32.

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses at the end of that criterion.

(d) Among projects judged to be relatively equal in quality (within 15 points), the Secretary may select a project to—

(1) Ensure that a diversity of approaches are funded to meet a variety of community education needs throughout the country; and

(2) Avoid duplicating the activities of a currently funded project.

(20 U.S.C. 3289)

§ 443.31 Criteria for evaluating applications from State educational agencies.

The Secretary evaluates an application from an SEA on the basis of the criteria in this section. The maximum possible score for all criteria is 100 points. The maximum possible score for each complete criterion is indicated in parentheses at the end of that criterion.

(a) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly. (10 points)

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides. (7 points)

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project. (5 points)

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590 of EDGAR—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable. (5 points)

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate. (3 points)

(f) *Quality of State-level activities.* The quality of State-level activities to develop community education. In applying this criterion, the Secretary considers the degree to which the SEA has developed and will carry out—

(1) An assessment of State-level agencies and organizations providing programs and services related to community education and of resources available to the SEA in developing its community education activities;

(2) Provisions for participation by State agencies, organizations, personnel, and the public in the development of the SEA application and in the implementation and evaluation of the project;

(3) A plan for cooperation among existing resources of State agencies, public and private organizations, and State associations providing community and human services related to community education;

(4) A plan for coordination with institutions of higher education for training of—SEA community education personnel, personnel of LEAs assisted by the State project, and personnel of federally funded LEA community education projects in the State;

(5) Activities to foster the inclusion of programs listed in Section 806 of the Act (34 CFR 440.7 of the regulations) in community education programs; and

(6) Activities to create greater awareness of community education among State agencies, organizations, and associations. (30 points)

(g) *Quality of technical assistance.* The overall quality of the plan for assisting local community education programs. In applying this criterion, the Secretary considers the degree to which the SEA has planned for and will carry out—

(1) A needs assessment of LEAs;

(2) Activities to assist LEAs in developing community education programs, including—

(i) Assisting LEAs to meet the minimum elements of a community education program;

(ii) Helping LEAs plan and develop applications for assistance under the Act;

(iii) Helping to establish and coordinate community education task forces and advisory bodies;

(iv) Providing for the training of local directors of community education programs and their staffs and community members;

(v) Providing assistance in the dissemination of information about community education programs;

(vi) Helping community education programs to develop and conduct evaluations; and

(vii) Helping LEAs bring their community education programs into conformity with any State plan for community education.

(3) A process for involving LEAs, institutions of higher education, and appropriate individuals and groups in the preparation and operation of the technical assistance program. (30 points)

(h) *National impact.* The project's potential usefulness to other SEAs and potential for national impact on the advancement of community education. (10 points)

(Sec. 810; 20 U.S.C. 3290)

§ 443.32 Criteria for evaluating applications from other public agencies and nonprofit private organizations.

The Secretary evaluates an application from other public agencies and nonprofit organizations on the basis of the criteria in this section. The maximum possible score for all criteria is 100 points. The maximum possible score for each complete criterion is indicated in parentheses at the end of that criterion.

(a) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly. (10 points)

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides. (7 points)

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project. (5 points)

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590 of EDGAR—Evaluation by the Grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable. (5 points)

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate. (3 points)

(f) *Client involvement.* (1) The extent to which the applicant plans to involve potential clients of the project in the design and operation of the project; and

(2) Provisions to assure that the applicant has entered or will enter into contractual arrangements or other suitable forms of agreement with the

LEA involved in the proposal. (20 points)

(g) *Potential for advancing community education.* The degree to which the proposed project has the potential for advancing community education nationally. In applying this criterion, the Secretary considers the degree to which the project—

(1) Includes unique or diverse methods of fostering interagency cooperative methods;

(2) Provides a plan to affect a given audience or group nationally; or

(3) Provides different methods of developing community education permanence within the applicant agency or organization. (30 points)

(h) *Dissemination.* The degree to which the applicant plans to evaluate the project results and disseminate them to a national audience. In applying this criterion the Secretary considers—

(1) The applicant's proposed plan for developing an evaluation of the project;

(2) The applicant's proposed plan to develop usable information, including characteristics, practices, procedures, and materials, resulting from the project; and

(3) The applicant's provisions for disseminating the project results to a broad audience or to special client groups that could benefit from knowledge or project results. (20 points)

(Sec. 810; 20 U.S.C. 3290)

Subpart E—What Conditions Must be Met by a Grantee?

§ 443.40 Cost sharing.

(a) An SEA, other public agency, or nonprofit private organization that receives a grant shall meet the cost sharing requirement in Section 815(c) of the Act.

(b) The Federal share of the cost of a project is 90 percent for fiscal years 1979 and 1980 and 80 percent for fiscal years 1981, 1982, and 1983.

(c) Cost sharing is subject to the requirement in 34 CFR Part 74, Subpart G.

(Sec. 815(c), 20 U.S.C. 3295(c))

[45 FR 22708, Apr. 3, 1980; 45 FR 29588, May 5, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

PART 444—COMMUNITY EDUCATION—TRAINING GRANTS TO INSTITUTIONS OF HIGHER EDUCATION

Subpart A—General

Sec.

444.1 What general provisions apply to this program?

Subpart B—What Kinds of Training Projects Does the Secretary Fund?

444.10 Eligible applicants.
444.11 Types of projects.
444.12 Training activities.
444.13 Project period.

Subpart C—How Does an Applicant Apply for a Grant?

444.20 Application requirements.

Subpart D—How is a Grant Made?

444.30 How the Secretary judges projects for training grants to institutions of higher education.
444.31 Criteria for evaluating applications for training projects from institutions of higher education.

AUTHORITY: Title VIII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561, 92 Stat. 2284 (20 U.S.C. 3281), unless otherwise noted.

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Subpart A—General

§ 444.1 What general provisions apply to this program?

The provisions of Subpart A of 34 CFR Part 440, §§ 440.1 through 440.9, apply to the Training Grants to Institutions of Higher Education program under this part.

Subpart B—What Kinds of Training Projects Does the Secretary Fund?

§ 444.10 Eligible applicants.

The Secretary awards grants to institutions of higher education to pay all or part of the costs of developing, establishing, expanding, or operating programs to provide training for personnel who are engaged in or who intend to engage in community education programs.

(Sec. 812; 20 U.S.C. 3292)

§ 444.11 Types of projects.

(a) Projects may focus on one or more of the following areas of training:

(1) General community education training designed to introduce persons interested in commencing and developing community education programs to the practices, procedures, and history of community education.

(2) Training of SEA community education leaders in managing a State program and in providing technical assistance to local districts throughout their State.

(3) Develop training materials based on proven effective strategies that have been used to implement community education programs at the State, local, and institution of higher education levels.

(4) Disseminating information about national training and bringing together different organizations and institutions providing training to persons in community education.

(5) Training by Statewide, regional, or national consortia composed of a variety of skilled trainers—

(i) To provide interdisciplinary training to persons interested in community education; or

(ii) To provide training on new methods of collaboration among agencies and institutions providing services in community education.

(6) Other areas of training in community education.

(b) The Secretary publishes a notice annually in the FEDERAL REGISTER inviting applications for the program. The notice may establish priorities among these areas or reserve funds for them.

(Sec. 812; 20 U.S.C. 3292)

§ 444.12 Training activities.

The training shall be—

(a) Provided on a continuing basis over the course of the grant period, with provisions for follow-up and reinforcement of specific training skills or activities; and

(b) Offered at times and in a manner that will allow participation by recipients without disrupting their responsibilities for planning and working with community education programs; and

(c) Develop in consultation with appropriate SEAs and LEAs.

(Sec. 812, 20 U.S.C. 3292)

§ 444.13 Project period.

The provisions in § 442.12 concerning project duration apply to training grants to institutions of higher education.

(Sec. 812, 20 U.S.C. 3292)

Subpart C—How Does an Applicant Apply for a Grant?

§ 444.20 Application requirements.

The application requirements described in § 442.20 apply to this program.

(Sec. 812, 20 U.S.C. 3292)

Subpart D—How is a Grant Made?

§ 444.30 How the Secretary judges projects for training grants to institutions of higher education.

(a) The Secretary evaluates an application on the basis of the criteria in § 444.31.

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses at the end of that criterion.

(d) Among projects judged to be relatively equal in quality (within 15 points), the Secretary may select a project to—

(1) Ensure that a diversity of approaches are funded to meet a variety of community education needs throughout the country; and

(2) Avoid duplicating the activities of a currently funded project.

(Sec. 809, 20 U.S.C. 3289)

§ 444.31 Criteria for evaluating applications for training projects from institutions of higher education.

The Secretary evaluates an application from an institution of higher education on the basis of the criteria in this section. The maximum possible score for all criteria is 100 points. The maximum possible score for each complete criterion is indicated in parentheses at the end of that criterion.

(a) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly. (10 points)

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in pararaphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides. (7 points)

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project. (5 points)

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590 of EDGAR—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable. (5 points)

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate. (3 points)

(f) *Quality of project.* The quality of the proposal in addressing one or more of the areas of training described in § 444.11(a). (15 points)

(g) *Knowledge of existing community education training.* The extent to which the proposed project reflects and builds upon a knoweldge of existing community education training and research related to the specific training area. (10 points)

(h) *Client involvement.* The extent to which the applicant plans to involve potential clients of the project in designing and implementing the project. (10 points)

(i) *Potential for advancing community education.* The degree to which the proposed project has the potential for advancing community education nationally. In applying this criterion, the Secretary considers such factors as the degree to which the project—

(1) Includes unique or diverse methods of fostering interagency cooperative methods;

(2) Provides a plan to affect a given audience or group; and

(3) Provides different methods of developing community education permanence within the agency or organization being trained. (20 points)

(j) *Dissemination.* The degree to which the applicant plans to evaluate the project results and disseminate them to a national audience. In applying this criterion, the Secretary considers—

(1) The applicant's proposed plan for developing and evaluation of the project;

(2) The applicant's proposed plan to develop usable information, including characteristics, practices, procedures, and materials resulting from the project; and

(3) The applicant's provisions for disseminating the project results to a broad audience or to a special client group that could benefit from knowledge of the project results. (15 points)

(Sec. 812; 20 U.S.C. 3292)

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CHAPTER V—OFFICE OF BILINGUAL EDUCATION AND MINORITY LANGUAGES AFFAIRS, DEPARTMENT OF EDUCATION

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PART 500—BILINGUAL EDUCATION: GENERAL PROVISIONS

Subpart A—General

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Subpart B—[Reserved]

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Subpart E—What Conditions Apply to a Grantee?

500.40 What is the length of the project period?
500.41 What requirements pertain to the use of funds for training activities and fellowships?

AUTHORITY: Title VII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561 (20 U.S.C. 3221-3261; 92 Stat. 2268-2284), unless otherwise noted.

SOURCE: 45 FR 23211, Apr. 4, 1980, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—General

§ 500.1 What programs are authorized under the Bilingual Education Act?

The Bilingual Education Act authorizes the following programs:

(a) *Basic Projects in Bilingual Education* (34 CFR Part 501). This program provides financial assistance to establish, operate, or improve programs of bilingual education to assist children of limited English proficiency to improve their English language skills. These projects are designed to build the capacity of the grantee to continue programs of bilingual education when Federal funding is reduced or no longer available.

(20 U.S.C. 3223-3231)

(b) *Demonstration Projects* (34 CFR Part 502). This program provides financial assistance to demonstrate exemplary approaches to providing programs of bilingual education and to building the capacity of the grantee to continue those programs when Federal funding is reduced or no longer available.

(20 U.S.C. 3223-3231)

(c) *State Educational Agency Projects for Coordinating Technical Assistance* (34 CFR Part 503). This program provides financial assistance to State educational agencies (SEAs) to coordinate technical assistance to programs of bilingual education funded under the Act within their States.

(20 U.S.C. 3231(b)(5))

(d) *Support Services Projects* (34 CFR Part 504). This program provides financial assistance to strengthen programs of bilingual education and bilingual education training programs. There are two types of centers authorized:

(1) *Bilingual Education Service Centers* (BESCs). These centers provide training and other services to programs of bilingual education and bilingual education training programs within designated service areas.

(2) *Evaluation, Dissemination, and Assessment Centers* (EDACs). These centers assist programs of bilingual education and bilingual education training programs within designated service areas in assessing, evaluating, and disseminating bilingual education materials.

(20 U.S.C. 3231, 3233)

(e) *Training Projects* (34 CFR Part 510). This program provides financial assistance to establish, operate, or improve training programs for persons who are participating in, or preparing to participate in, programs of bilingual education or bilingual education training programs.

(20 U.S.C. 3233)

(f) *School of Education Projects* (34 CFR Part 514). This program provides financial assistance to institutions of higher education (IHEs) to develop or expand their capability to provide degree-granting bilingual education training programs by—

(1) Establishing such programs at the undergraduate or graduate level; or

(2) Expanding the scope of existing programs to include curricula related to other fields of study useful in training personnel for participation in programs of bilingual education.

(20 U.S.C. 3233)

(g) *Desegregation Support Program* (34 CFR Part 520). This program provides assistance to desegregating local educational agencies (LEAs) to meet the needs of children who are from an environment in which the dominant language is other than English and who lack equality of educational opportunity because of language barriers and cultural differences.

(20 U.S.C. 3261)

(h) *Fellowship Program* (34 CFR Part 515). This program provides financial assistance to full-time graduate students who are preparing to become trainers of teachers for bilingual education.

(20 U.S.C. 3233)

(i) *Materials Development Projects Program* (34 CFR Part 506).

(1) This program awards grants and contracts to develop instructional and testing materials for use in programs of bilingual education and bilingual education training programs.

(2) Grants under this program are covered by these regulations.

(3) Contracts are subject to—

(i) The requirements of the Bilingual Education Act;

(ii) The regulations in 41 CFR Chapters 1 and 34; and

(iii) The requirements and criteria in particular requests for proposals (RFPs).

(20 U.S.C. 3231 (a)(1), (a)(4))

(j) *Research and Development Program.* (1) This program authorizes—

(i) Research activities funded by the Department (ED);

(ii) Research—funded by the National Institute of Education (NIE) in consultation with ED—to enhance the effectiveness of bilingual education and other programs for persons who have language proficiencies other than English;

(iii) Coordination—by the Secretary—of ED, NIE, the National Center for Education Statistics (NCES), and other appropriate agencies to develop a national research program for bilingual education; and

(iv) Development and dissemination of instructional materials and equipment suitable for programs of bilingual education.

(2) Awards under this program are made by contract and are not covered by these regulations.

(3) These contracts are subject to—

(i) The requirements of the Bilingual Education Act;

(ii) The regulations in 41 CFR Chapters 1 and 34; and

(iii) The requirements and criteria in particular requests for proposals (RFPs).

(20 U.S.C. 3252)

[45 FR 23211, Apr. 4, 1980; 45 FR 35818, May 28, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 500.2 Who is eligible for assistance under these programs?

(a) *Basic Projects in Bilingual Education.* Those eligible for assistance under this program are—

(1) An LEA;

(2) An IHE that applies jointly with one or more LEAs; or

(3) An elementary or secondary school operated or funded by the Bureau of Indian Affairs (BIA) for Indian children on a reservation.

(20 U.S.C. 3231(b)(1), 3232)

(b) *Demonstration Projects.* Those eligible for assistance under this program are—

(1) An LEA;

(2) An IHE that applies jointly with one or more LEAs; or

(3) An elementary or secondary school operated or funded by BIA for Indian children on a reservation.

(20 U.S.C. 3231(b)(1), 3232)

(c) *State Educational Agency Projects for Coordinating Technical Assistance.* An SEA is eligible for assistance under this program.

(20 U.S.C. 3231(b)(5))

(d) (1) *Support Services Projects: BESCs.* Those eligible for assistance under this program are—

(i) An LEA;

(ii) An SEA;

(iii) An IHE or a nonprofit private organization that applies after consultation with one or more LEAs or with an SEA; or

(iv) An IHE or a nonprofit private organization that applies jointly with one or more LEAs or with an SEA.

(20 U.S.C. 3233(b))

(2) *Support Services Projects: EDACs.* Those eligible for assistance under this program are—

(i) An LEA; or

(ii) An IHE that applies jointly with one or more LEAs.

(20 U.S.C. 3231(b)(1))

(e) *Training Projects.* Those eligible for assistance under this program are—

(1) An LEA;

(2) An SEA;

(3) An IHE or a nonprofit private organization that applies after consultation with one or more LEAs or with an SEA; or

(4) An IHE or a nonprofit private organization that applies jointly with one or more LEAs or with an SEA.

(20 U.S.C. 3233(b))

(f) *School of Education Projects.* Those eligible for assistance under this program are—

(1) An IHE with a school, department, or college of education or a bilingual education training program that applies after consultation with one or more LEAs or with an SEA; or

(2) An IHE with a school, department, or college of education or a bilingual education training program that applies jointly with one or more LEAs or with an SEA.

(20 U.S.C. 3233(b))

(g) *Desegregation Support Program.* (1) (i) An LEA that meets the requirements of Sections 606(a) and 606(c) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), and any regulations implementing those sections, may apply for a grant.

(ii) If an applicant LEA does not meet the requirements in Section 606(c) of ESEA, the Secretary uses the procedures for show cause conferences established by regulations under Title VI of ESEA.

(iii) The Secretary uses the procedures for granting a waiver of ineligibility described in Section 606(c) of ESEA and in regulations implementing that section.

(2) A nonprofit private agency, institution, or organization may apply for a grant if it has received a request for curriculum development from an LEA that is eligible under paragraph (g)(1)(i) of this section or that has received a waiver of ineligibility under paragraph (g)(1)(iii) of this section.

(20 U.S.C. 3261)

(h) *Fellowship Program.* (1) An IHE that offers a program of study leading to a degree above the master's level in the field of training teachers for bilingual education is eligible to participate in this program.

(2) An individual is eligible to apply for a fellowship under this program if this individual—

(i) (A) Is a citizen, a national, or a permanent resident of the United States;

(B) Is in the United States for other than a temporary purpose and can provide evidence from the Immigration and Naturalization Service of his or her intent to become a permanent resident; or

(C) Is a permanent resident of the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territories of the Pacific Islands; and

(ii) Has been accepted for enrollment as a full-time student in a course of study offered by an IHE approved for participation in this program. The course of study must lead to a degree above the master's level in the field of training teachers for bilingual education.

(20 U.S.C. 3233)

(i) *Materials Development Projects.* Those eligible for assistance under this program are—

(1) An LEA; or

(2) An IHE that applies jointly with one or more LEAs.

(20 U.S.C. 3231(b)(1))

[45 FR 23211, Apr. 4, 1980; 45 FR 35818, May 28, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 500.3 What regulations govern these programs?

(a) The following regulations apply to grants and fellowships awarded under the Act:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (Definitions).

(2) The Education Appeal Board regulations in 34 CFR Part 78.

(3) The regulations in these parts (34 CFR Parts 500-506, 510, 514, 515, and 520).

(b) (1) However, the regulations in these parts do not apply to noncompeting continuation grants under the Basic Projects in Bilingual Education, Support Services Projects, Training Projects, and Materials Development Projects programs for fiscal year 1980.

(2) The interim final regulations for the Bilingual Education Program, published in the FEDERAL REGISTER on March 29, 1979 (44 FR 18906), apply to those grants for fiscal year 1980.

(c) The following provisions of EDGAR do not apply to the types of awards described:

(1) The provisions in 34 CFR Part 75 do not apply to the Fellowship Program (Part 500), except for the provisions in 34 CFR 75.51 (relating to proof of nonprofit status).

(2) The provisions in 34 CFR 75.250(a), 75.253 (a) and (b), and 75.254 (relating to the approval of multi-year projects) do not apply to grants made to LEAs as sole or joint applicants under any of the Bilingual Education Programs.

(3) The provisions in 34 CFR 75.217(a)(3) and (c)-(e) (relating to the review of applications) do not apply to the State Educational Agency Projects for Coordinating Technical Assistance Program. In addition, the provisions of 34 CFR 75.217(a) and (b) do not apply to the review of applications from SEAs submitted under 34 CFR 503.30(c).

(4) Any provision in EDGAR that conflicts with any provision in these parts does not apply to awards under these parts.

(20 U.S.C. 1221e-3)

§ 500.4 What definitions apply to these programs?

In addition to terms defined in 34 CFR Part 77, the following terms are used in these parts:

"Act" means the Bilingual Education Act (Title VII of the Elementary and Secondary Education Act, as amended).

(20 U.S.C. 3221)

"Full-time student" means a student who is carrying a full-time academic work load as determined by the institution at which he or she is enrolled. The institution's standard for determining the student's full-time status in a program of study must be applicable to all students enrolled in the program.

(20 U.S.C. 3221-3261)

"Institution of higher education" (IHE) means an educational institution, including a junior college or community college, in any State that meets the requirements of Section 1001(e) of the Elementary and Secondary Education Act of 1965, as amended.

(20 U.S.C. 3381(e))

"Limited English proficiency", with reference to an individual, means an individual—

(1) (i) Who was not born in the United States or whose native language is other than English;

(ii) Who comes from a home in which a language other than English is most relied upon for communication; or

(iii) Who is an American Indian or Alaskan Native student and comes from an environment in which a language other than English has had a significant impact on his or her level of English language proficiency; and

(2) Who, as a result of the circumstances described in paragraph (1) of the definition of "Limited English Proficiency" of this section, has sufficient difficulty in understanding, speaking, reading, or writing the Eng-

lish language to deny him or her the opportunity to learn successfully in classrooms in which the language of instruction is English.

(20 U.S.C. 3223(a)(1))

"Local educational agency" (LEA) means—

(1) An LEA as defined in EDGAR; or

(2) A nonprofit institution or organization of an Indian tribe that—

(i) Operates an elementary or secondary school in which Indian children constitute more than 50 percent of the enrollment; and

(ii) Is approved by the Secretary for purposes of carrying out programs under the Act.

(20 U.S.C. 3232(a), 3381(f))

"Low income" means an annual family income that does not exceed the poverty level determined under Section 111(c)(2) of Title I of the Elementary and Secondary Education Act of 1965, as amended.

(20 U.S.C. 3223(a)(3))

"Native language" means the language normally used by an individual, or, in the case of a child, the language normally used by the parents of the child.

(20 U.S.C. 3223(a)(2))

"Program of bilingual education" means a program of instruction designed for children of limited English proficiency in elementary or secondary schools, with the following characteristics:

(1) There is instruction given in, and study of, English and (to the extent necessary to allow children to achieve competence in the English language) the native language of the children of limited English proficiency.

(2) The instruction is given with appreciation for the cultural heritage of the children of limited English proficiency and of other children in American society, with emphasis on those cultures represented in the LEA.

(3) The instruction is given in all courses or subjects of study to the extent necessary to allow a child to progress effectively through the educational system.

(20 U.S.C. 3223(a)(4))

"Qualified bilingual personnel" means individuals—

(1) Who are qualified under State and local law to teach the subjects and grades to which they are assigned;

(2) Who have successfully completed a course of study or the equivalent inservice training in the use of classroom materials and instructional practices for bilingual education;

(3) Who are able to converse with proficiency in English and in the native language of the students, both on general topics and in their assigned areas of instruction. This includes the ability to understand, speak, read, and write the language; it neither implies nor precludes an extensive vocabulary which might be necessary to converse with native speakers on complicated matters not related to the subjects which they are required to teach; and

(4) Who are able to communicate effectively with parents in their native language and in English about school matters.

(20 U.S.C. 3231(b)(3))

Subpart B—[Reserved]

Subpart C—How Does One Apply for a Grant?

§ 500.20 What are the requirements for SEA review of an application?

(a) Except as specified in paragraph (d) of this section, an applicant that seeks assistance for a project under 34 CFR Parts 500-506, 514, 515 and 520 shall submit its application for comment to the SEA of the State(s) in which the applicant proposes to conduct the project.

(b) If an applicant seeks assistance under Support Services Projects (Part 504), the applicant shall submit its application for comment to the SEAs of all States within its designated service area.

(c) Procedures for State comment are specified in EDGAR (34 CFR 75.155-75.159) except that—

(1) The applicant shall provide a copy of its application to the SEA in advance of its submission to ED in order to afford the SEA a reasonable

opportunity to comment on the application to the applicant; and

(2) If the applicant subsequently makes substantive revisions in its application, it shall submit a copy of the revised application to the SEA so that the SEA may comment to the Secretary under the provisions in EDGAR.

(d) An eligible school operated or funded by BIA shall submit its application for comment to the Secretary of the Interior or his or her designee, using the procedures described in paragraph (c) of this section.

(20 U.S.C. 3231(b)(3)(D))

Subpart D—[Reserved]

Subpart E—What Conditions Apply to a Grantee?

§ 500.40 What is the length of the project period?

(a) *Grants to LEAs.* In the case of an application submitted by an LEA as either a sole or joint applicant, the Secretary uses the following procedures:

(1) The Secretary approves a project period of from one to three years based on—

(i) The severity and likely duration of the problems addressed by the project;

(ii) The nature of the proposed activities; and

(iii) The quality of the application based on the appropriate selection criteria.

(2) The Secretary makes a continuation award for a budget period after the first budget period of an approved multi-year project under the conditions in Section 721(e)(2) of the Act.

(3) In determining whether the grantee is making satisfactory progress toward achieving the stated objectives of the program, the Secretary—

(i) Compares the objectives contained in the approved application with the results of the grantee's annual evaluation; and

(ii) Considers the information attained through site review and any other contact with the grantee.

(20 U.S.C. 3231(e))

(b) *Grants to applicants other than LEAs.* (1) In the case of an application submitted by an applicant other than an LEA, the Secretary uses the procedures and criteria in EDGAR for setting the project period and determining whether to make a continuation award.

(2) However, in the case of an application under the School of Education Projects Program, the Secretary approves a project period of three years.

(20 U.S.C. 1221e-3, 3233)

(c) *Fellowship Program*—(1) *Approvals of IHEs for participation.* The Secretary approves an IHE's application for participation in the Fellowship Program (34 CFR Part 515) for a period of from one to five years based on the quality of the applicant's bilingual education training program.

(2) *Fellowship awards.* (i) The Secretary approves a fellowship for one year.

(ii) A recipient of a fellowship who seeks assistance beyond this period to continue in the program of study must be renominated by the participating IHE.

(iii) The Secretary approves all renominations of recipients who maintain satisfactory progress in the program of study before approving nominations of new students.

(iv) A fellowship may be awarded for a maximum of two years to a student who maintains satisfactory progress in a post-master's program of study.

(v) A fellowship may be awarded for a maximum of three years to a student who maintains satisfactory progress in a doctoral program of study.

(vi) However, where adequate justification is provided by an IHE, the Secretary may extend a fellowship beyond the maximum period to a recipient who, for circumstances beyond his or her control, is not able to complete the program of study in that period.

(20 U.S.C. 3233(a)(2))

[45 FR 23211, Apr. 4, 1980; 45 FR 35818, May 28, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 500.41 What requirements pertain to the use of funds for training activities and fellowships?

(a) *Allowable costs.* The allowable costs for training activities under those Bilingual Education Programs in which training is an authorized activity and for fellowships under the Fellowship Program may include—

(1) Tuition and fees—the normal and usual costs associated with the course of study;

(2) Books—up to $250;

(3) Travel—up to $250 for travel to field-study sites; and

(4) A stipend.

(b) *Stipends for long-term training.* (1) Long-term training is training with a duration in excess of 90 days.

(2) An individual may receive a stipend if he or she is—

(i) A full-time student in a program of study which was approved in the application; and

(ii) Gainfully employed no more than 20 hours a week or the annual equivalent.

(3) A stipend for an individual enrolled in a course of study leading to a master's degree or baccalaureate degree may not exceed $325 per month.

(4) A stipend for an individual enrolled in course of study leading to a degree beyond the master's level may not exceed $400 per month. However, an individual participating in the Fellowship Program who has been employed in the field of bilingual education for at least two years may receive a stipend of up to $500 per month.

(c) *Stipends for short-term training.* (1) Short-term training is training with a duration of 90 days or less.

(2) An individual may receive a stipend only if he or she is not otherwise compensated for his or her time during that training.

(3) The grantee may award a stipend to an individual participating in short-term training in accordance with its prevailing policies and rates for training not funded under the Act.

(20 U.S.C. 3231(b)(1), 3233(a)(3), 3233(b))

PART 501—BILINGUAL EDUCATION: BASIC PROJECTS IN BILINGUAL EDUCATION

Subpart A—General

Sec.

501.1 What general provisions apply to this program?

Subpart B—What Kinds of Activities Does the Department Assist?

501.10 What activities are eligible for assistance?
501.11 What is the purpose of a program of bilingual education?
501.12 What programs are there for children of limited Spanish proficiency?

Subpart C—How Does One Apply for a Grant?

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501.21 How does the Secretary provide for the participation of children enrolled in nonprofit private schools?
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501.30 What selection criteria does the Secretary use?
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501.40 What restrictions are there on the participation of children whose language is English?
501.41 What restrictions are there on the participation of children of limited English proficiency in courses such as art, music, and physical education?
501.42 Where is a program of bilingual education offered?
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501.44 What requirements pertain to the establishment of an advisory committee?
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501.46 What other requirements apply?
501.47 How does the Secretary terminate a grant when the grantee no longer needs assistance?

AUTHORITY: Title VII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561 (20 U.S.C. 3221-

3261; 92 Stat. 2268-2284), unless otherwise noted.

SOURCE: 45 FR 23214, Apr. 4, 1980, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—General

§ 501.1 What general provisions apply to this program?

The general provisions of 34 CFR Part 500 apply to this program.

(20 U.S.C. 3223, 3231)

Subpart B—What Kinds of Activities Does the Department Assist?

§ 501.10 What activities are eligible for assistance?

The following activities are authorized for Basic Projects in Bilingual Education:

(a) Establishing, operating, or improving programs of bilingual education.

(b) Providing auxiliary and supplementary community and educational activities designed to facilitate and expand the implementation of programs of bilingual education, including—but not limited to—activities such as—

(1) Adult education programs, particularly for parents of children who are participating in programs of bilingual education, to be carried out, where appropriate, in coordination with programs assisted under the Adult Education Act;

(2) Training for parents of students enrolled in programs of bilingual education to enable them to participate more fully in the education of their children; and

(3) Preschool programs preparatory and supplementary to programs of bilingual education conducted by LEAs under the Act or with State or local funds.

(c) Providing auxiliary and supplementary training activities for persons who are participating in, or preparing to participate in, programs of bilingual education. The following activities are authorized:

(1) Training in the languages used in the program.

(2) Providing opportunities for career development, including opportunities to—

(i) Enroll in degree-granting programs in bilingual education at IHEs; and

(ii) Improve the special skills necessary to conduct programs of bilingual education.

(3) Training designed to help participants meet State and local certification requirements for teachers.

(d) Planning, providing technical assistance for, and taking other steps leading to the development of, programs of bilingual education.

(20 U.S.C. 3231(a), 3233(a)(7))

[45 FR 23214, Apr. 4, 1980; 45 FR 35818, May 28, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 501.11 What is the purpose of a program of bilingual education?

The purpose of a program of bilingual education is to assist children of limited English proficiency to improve their English language skills.

(20 U.S.C. 3223(a)(4)(B))

§ 501.12 What programs are there for children of limited Spanish proficiency?

(a) In the Commonwealth of Puerto Rico only, a grantee may offer a program of bilingual education to serve the needs of children of limited Spanish proficiency.

(b) This program may be in addition to a program designed to serve the needs of children of limited English proficiency.

(20 U.S.C. 3223, 3231(d))

Subpart C—How Does One Apply for a Grant?

§ 501.20 What requirements pertain to advisory councils and advisory committees?

(a) An applicant shall—

(1) Establish an advisory council to assist in the development of the application;

(2) Solicit nominations for advisory council membership from parents and other representatives of children of limited English proficiency;

(3) At a minimum, publish a solicitation of nominations for membership in a newspaper or other publication likely to bring the solicitation to the attention of potential members;

(4) Provide the council members with adequate resources, including staff with language skills in the native language of the council members; and

(5) Submit with its application documentation of its consultations with the council and the council's comments on the application.

(b) The advisory council must consist of at least seven persons, a majority of whom must be parents and other representatives of children of limited English proficiency;

(c) An applicant shall submit with its application an assurance that, in carrying out its project, it will provide for frequent consultations with, and participation by, the advisory committee described in § 501.44.

(20 U.S.C. 3223(a)(4)(E))

§ 501.21 How does the Secretary provide for the participation of children enrolled in nonprofit private schools?

(a) An applicant shall provide for the participation in its project of children enrolled in nonprofit private schools in the area to be served whose educational needs, language(s), and grade level(s) are of a similar type to those which the project is intended to address.

(b) (1) In meeting the requirement in paragraph (a) of this section, the applicant shall comply with the requirements of EDGAR (34 CFR 76.651-76.662).

(2) For the purpose of this section, the terms "subgrantee" and "subgrant" as used in those sections of EDGAR mean "grantee" and "grant", respectively.

(c) If an applicant fails to provide for the participation of children enrolled in nonprofit private schools as required by this section, the Secretary—

(1) Withholds approval of the application until the applicant demonstrates that it will provide for the participation of those children; or

(2) Reduces the amount of the grant by the amount the Secretary needs to—

(i) Arrange to assess the needs of children in nonprofit private schools in the area to be served; and

(ii) Carry out a program of bilingual education for those children.

(d) (1) In addition to meeting the requirements in paragraphs (a) and (b) of this section, an applicant may, at its option, provide a program of bilingual education for children enrolled in nonprofit private schools in the area to be served whose language or grade level is not of a similar type to that of the public school participants.

(2) An applicant that proposes to provide services to children enrolled in nonprofit private schools under paragraph (d)(1) of this section shall comply with the requirements in 34 CFR 76.657-76.662.

(20 U.S.C. 3231(b)(3)(C)(ii), (f))

§ 501.22 What requirements pertain to training activities?

An applicant shall—

(a) Include in the application a training component that includes one or more of the activities described in § 501.10(c).

(b) Base these training activities on an assessment of the needs of the persons who will be participating in, or preparing to participate in, the project; and

(c) Include in its budget adequate funds for these training activities.

(20 U.S.C. 3231(a)(3)(B), (b)(3)(B))

§ 501.23 What requirements pertain to the development of an evaluation plan?

(a) An applicant shall include in its application a plan for evaluating the progress and achievements of the proposed project.

(b) The evaluation plan must include—

(1) Provisions for measuring the accomplishment of the instructional objectives of the project;

(2) Provisions for measuring the students' progress in improving their English language skills; and

(3) A procedure for using the information gained from the evaluation to improve the operation of the project.

(20 U.S.C. 3231(b)(3)(C)(iii))

§ 501.21 What requirements pertain to the identification of children of limited English proficiency?

(a) Before submitting an application, each applicant shall conduct an assessment of the children in the schools and grades to be served by the project to identify children of limited English proficiency.

(b) The assessment must include a determination of the proficiency in understanding, speaking, reading, and writing the English language of children who meet the requirements of paragraph (1) of the definition of "limited English proficiency" in § 500.4 of this chapter.

(c) Assessments of proficiency in speaking English must be administered individually to each child.

(d) The assessment must differentiate between children with language problems related to learning disabilities and children who are of limited English proficiency, as defined in § 500.4 of this chapter.

(e) If the applicant has an assessment procedure which has been approved by the Office for Civil Rights, the applicant may use that assessment procedure.

(20 U.S.C. 3223, 3231)

Subpart D—How Is a Grant Made?

§ 501.30 What selection criteria does the Secretary use?

In reviewing a Basic Projects application for assistance, the Secretary considers the following criteria worth a total of 110 possible points:

(a) *Need.* (15 points)

(1) The Secretary considers the percentage of the children of limited English proficiency to be served by the project who have never been served under the Act.

Percentage	Points
95 to 100	10
90 to 94	9
85 to 89	8
80 to 84	7
75 to 79	6
70 to 74	5
65 to 69	4
60 to 64	3
55 to 59	2
50 to 54	1
49 and below	0

(2) The Secretary considers the percentage of the children to be served by the project who are members of low-income families.

Percentage	Points
85 to 100	5
70 to 84	4
55 to 69	3
40 to 54	2
25 to 39	1
24 and below	0

(b) *Rationale for selection of project sites and participants.* (10 points)

The Secretary considers—

(1) The adequacy of the applicant's justification for concluding that the schools selected for the project enroll the children most in need of assistance within the district;

(2) The appropriateness of the methods used to select children to be served by the project;

(3) The extent to which the project serves the children most in need of assistance, within the schools selected, as determined by the initial assessment required in § 501.24; and

(4) The extent to which resources have been concentrated in a limited number of project schools to more effectively serve students.

(c) *Instructional approach.* (15 points)

The Secretary considers the extent to which—

(1) The program's instructional design addresses the needs of the children identified in the initial assessment described in § 501.24;

(2) The instructional materials and techniques are designed to enhance the proficiency of children in the English language;

(3) The project provides adequate justification for the degree of usage of the children's native language in the program of instruction;

(4) The project integrates the use of the native language into the program of instruction in a systematic manner; and

(5) The project uses instructional materials and approaches which are of comparable quality and diversity to those used in English language classrooms.

(d) *Performance objectives.* (15 points)

The Secretary considers the reasonableness of the project's time schedule and the cost effectiveness of its methods for accomplishing the following objectives:

(1) The achievement of goals set for the children served by the project, especially the goal of achieving English language proficiency.

(2) The identification of children who have achieved proficiency in the English language.

(3) The transfer of these children to instructional programs not funded under the Act.

(4) The training of persons who are participating in, or preparing to participate in, programs of bilingual education.

(e) *Evaluation plan.* (15 points)

The Secretary reviews the evaluation plan and its relation to the scope and objectives of the project. Specifically, the Secretary considers the extent to which—

(1) The overall evaluation design is consistent with, and appropriate for, the instructional and training objectives of the project;

(2) The design includes attention to—

(i) Assessing attainment of all objectives;

(ii) Data collection instruments and methods;

(iii) Data analysis procedures;

(iv) Time schedules; and

(v) Staff responsibilities;

(3) The evaluation design specifies a comparison procedure to estimate what the performance of participants would have been in the absence of the project;

(4) The methods to be used to identify nonparticipants for comparison or to utilize another comparison standard (e.g., a historical or statistical comparison) have been identified;

(5) Sampling procedures have been identified, if applicable, and steps have been taken to ensure that sample results will be representative of the entire project population;

(6) Data collection and analysis procedures have been identified which will address evaluation questions and which are appropriate for use with the project data; and

(7) The data obtained will contribute to improvements in the operation of the project.

(f) *Quality of personnel.* (*20 points*)

The Secretary considers—

(1) The quality of key personnel as evidenced by—

(i) The qualifications of the project director and other key personnel used in the project. (To determine the qualifications of a person, the Secretary considers evidence of experience in fields related to the objectives of the project, as well as other information that the applicant provides.);

(ii) The time that each person plans to commit to the project; and

(iii) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women; and

(C) Handicapped persons; and

(2) The quality of the applicant's plan to recruit and employ qualified bilingual personnel for the project.

(g) *Commitment and capacity.* (20 points)

The Secretary considers—

(1) Evidence of the applicant's past commitment to bilingual education; and

(2) The likelihood that the applicant will continue or increase that commitment as indicated by—

(i) Its plan for continuing teacher training when Federal funds are reduced or no longer available;

(ii) Its plan for expansion of the project;

(iii) Its plan to provide follow-up services from State and local resources to children who have achieved proficiency in English;

(iv) Specific plans for its gradual assumption of the costs of the program during the project period; and

(v) Plans for providing non-Federal resources to meet bilingual education needs in future years.

(h) *Prior grantees.* (1) The Secretary awards points under the criteria in paragraphs (f) and (g) of this section to an applicant which, within the three fiscal years prior to the fiscal year for which it is applying, has received a grant under the Act to carry out a program of bilingual education in the school(s), grade level(s), and language(s) to be served by the proposed project, only if it provides a special justification in its application.

(2) The special justification must include—

(i) Evidence of a continuing need for Federal assistance to carry out a program of bilingual education; and

(ii) Evidence that the applicant has significantly increased the number of qualified bilingual personnel in the project schools or improved the capability of existing staff.

(20 U.S.C. 3231 (b)(1), (b)(3), (c))

[45 FR 23214, Apr. 4, 1980; 45 FR 35818, May 28, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 501.31 What factors does the Secretary consider in awarding grants?

(a) The Secretary establishes a cut-off score which an application must meet, based on the criteria in § 501.30, in order to be considered for a grant. The cut-off score is announced annually in the application notice published in the FEDERAL REGISTER.

(b) The Secretary considers the following in awarding grants:

(1) The rank order of the application as determined by applying the criteria in § 501.30.

(2) The need to assist children of limited English proficiency who have been historically underserved by programs of bilingual education.

(3) The need to provide assistance in proportion to the distribution of children of limited English proficiency throughout the Nation, and within each of the States.

(4) The LEA's need for financial assistance to establish, operate, or improve programs of bilingual education.

(20 U.S.C. 3231 (b)(1), (b)(3), (b)(4), (c))

Subpart E—What Conditions Apply to a Grantee?

§ 501.40 What restrictions are there on the participation of children whose language is English?

(a) A grantee may allow the participation of children whose language is English in order to—

(1) Prevent the segregation of children on the basis of national origin in the program of bilingual education; and

(2) Broaden the understanding of children about languages and cultural heritages other than their own.

(b) The participation of children whose language is English must be for the principal purpose of assisting children of limited English proficiency to improve their English language skills.

(c) Children whose language is English may not exceed 40 percent of those participating in the program.

(d) Children previously served as children of limited English proficiency in programs funded under the Act may not be counted as children whose language is English.

(20 U.S.C. 3223(a)(4)(B))

§ 501.41 What restrictions are there on the participation of children of limited English proficiency in courses such as art, music, and physical education?

In courses such as art, music, and physical education, the grantee shall provide for the participation of children of limited English proficiency in classes that are not part of a program of bilingual education funded under the Act.

(20 U.S.C. 3223(a)(4)(C))

§ 501.42 Where is a program of bilingual education offered?

(a) The grantee shall serve children in the schools that they normally attend.

(b) The grantee may provide for centralization of teacher training and curriculum development activities.

(20 U.S.C. 3223(a)(4)(B))

§ 501.43 How shall children be grouped?

(a) If graded classes are used, a grantee shall, to the extent practicable, place each child enrolled in a program of bilingual education in a class or classes with children of approximately the same age and level of educational achievement.

(b) If the grantee places in the same class in a program of bilingual education children of significantly varying ages or levels of educational achievement, the grantee shall make every reasonable effort to ensure that each child is provided with instruction that is appropriate to his or her level of educational achievement.

(20 U.S.C. 3223(a)(4)(D))

§ 501.44 What requirements pertain to the establishment of an advisory committee?

(a) The grantee shall establish an advisory committee within 60 days after it receives an award.

(b) The grantee shall consult frequently with the committee in carrying out its project.

(c) Parents of children participating in the project shall select the members of the committee.

(d) Parents of children of limited English proficiency who are participating in the project must be a majority of the committee.

(e) In the case of projects carried out in secondary schools, the committee must include secondary students participating in the project who are selected by secondary students participating in the project.

(f) The committee may also include—

(1) Parents of other children participating in programs of bilingual education;

(2) Teachers; and

(3) Other interested individuals.

(g) A member of the advisory council described in § 501.20 also may serve as a member of the advisory committee.

(20 U.S.C. 3223(a)(4)(E))

§ 501.45 What requirements pertain to the children to be served by the project?

The grantee shall—

(a) Serve those children most in need of the assistance provided by the project;

(b) Set measurable goals for determining when children enrolled in a program of bilingual education no longer need assistance in developing proficiency in English;

(c) Conduct an evaluation, that meets the requirements in § 501.24, of each child who has been enrolled in a program of bilingual education for two years to determine if the child should remain in the program;

(d) Transfer to programs not funded under the Act, children who meet the goals stated in paragraph (b) of this section, as determined by the evaluation described in paragraph (c) of this section. This transfer shall occur—

(1) At a time established by the grantee; but

(2) No later than the beginning of the school year following the evaluation; and

(e) Provide, from State and local sources, for necessary follow-up services to sustain the achievement of children after they have left the program.

(20 U.S.C. 3231(b)(1)(B), (b)(3)(F))

§ 501.46 What other requirements apply?

(a) A grantee shall comply with the "supplement not supplant" requirement in Section 721(b)(3)(G) of the Act.

(b) A grantee shall use qualified bilingual personnel in the project, to the extent possible.

(c) A grantee shall inform parents of children participating in the program of the instructional goals of the program and the progress of their children in the program.

(20 U.S.C. 3223(a)(4)(F), 3231(b)(3))

§ 501.47 How does the Secretary terminate a grant when the grantee no longer needs assistance?

(a) Upon a determination that an LEA does not have a long-term need for continued assistance under the Act for a school or group of schools, the Secretary may issue an order to that LEA to submit a revised application containing a schedule under which the school or group of schools will cease to receive assistance five years after the issuance of the order.

(b) The Secretary issues this order in accordance with the conditions, criteria, and procedures contained in Section 721(b)(2) of the Act.

(20 U.S.C. 3231(b)(2))

PART 502—BILINGUAL EDUCATION: DEMONSTRATION PROJECTS

Subpart A—General

Sec.

502.1 What general provisions apply to this program?

Subpart B—What Kinds of Activities Does the Department Assist

502.10 What activities are eligible for assistance?
502.11 What priorities may the Secretary establish?

Subpart C—How Does One Apply for a Grant

502.20 What are the requirements when applying for a demonstration project?

Subpart D—How Is a Grant Made?

502.30 How does the Secretary review applications for assistance?
502.31 What selection criteria are specific to demonstration projects?

Subpart E—What Conditions Apply to a Grantee?

502.40 What requirements apply to all grantees?

AUTHORITY: Title VII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561 (20 U.S.C. 3221-3261; 92 Stat. 2268-2284), unless otherwise noted.

SOURCE: 45 FR 23218, Apr. 4, 1980, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—General

§ 502.1 What general provisions apply to this program?

The general provisions in Part 500 apply to this program.

(20 U.S.C. 3223, 3231)

Subpart B—What Kinds of Activities Does the Department Assist?

§ 502.10 What activities are eligible for assistance?

(a) The activities authorized for Basic Projects in Bilingual Education described in 34 CFR 501.10 are also authorized for Demonstration Projects.

(b) A Demonstration project must be designed to carry out a national demonstration of an exemplary Basic project.

(c) A project may address the needs of all children of limited English proficiency in the area to be served, or it may focus on the needs of a special target population.

(20 U.S.C. 3231(a), 3233(a)(7))

§ 502.11 What priorities may the Secretary establish?

(a) Each year the Secretary may select priorities from among the target groups and the components of a program of bilingual education described in paragraphs (e) and (f) of this section, respectively.

(b) The Secretary announces the priorities selected and the approximate amount of funds reserved for the priorities in the application notice published in the FEDERAL REGISTER.

(c) Applications submitted under priority areas described in paragraph (e) of this section compete against other applications submitted under priority areas described in that paragraph for funds allocated to those priority areas.

(d) Applications submitted under priority areas described in paragraph (f) of this section compete against other applications under priority areas described in that paragraph for funds allocated to those priority areas.

(e) The Secretary may select projects that propose to serve the following target groups of children:

(1) Exceptional children.

(2) Juvenile delinquents.

(3) Potential dropouts.

(4) Preschool children (A program proposing service to preschool children must be preparatory and supplementary to a program of bilingual education).

(5) Children of migratory workers.

(6) Recent immigrants.

(7) High school students preparing to enter the job market.

(f) The Secretary may select projects that demonstrate exemplary approaches to the following components of a program of bilingual education:

(1) Community or parental involvement.

(2) Curriculum development.

(3) Instructional technology.

(4) Project management.

(5) Participation of children whose language is English.

(20 U.S.C. 3231)

Subpart C—How Does One Apply for a Grant?

§ 502.20 What are the requirements when applying for a demonstration project?

The requirements when applying under the Basic Project in Bilingual Education Program (34 CFR 501.20-501.24) also apply under the Demonstration Projects Program.

(20 U.S.C. 3223, 3231)

Subpart D—How is a Grant Made?

§ 502.30 How does the Secretary review applications for assistance?

(a) The Secretary uses the selection criteria for Basic Projects in Bilingual Education (34 CFR 501.30) to evaluate applications.

(b) The Secretary reduces by 50 percent the total points assigned under paragraph (a) of this section.

(c) The Secretary also applies the selection criteria in § 502.31 worth a total of 45 possible points.

(d) The total possible score for the criteria in paragraphs (a) and (b) of this section is 100 points.

(e) In making awards, the Secretary considers—

(1) The rank order of the applications as determined by applying the selection criteria; and

(2) The need for geographic distribution of projects throughout the Nation.

(20 U.S.C. 3231(b)(1), (b)(3), (b)(4), (c))

§ 502.31 What selection criteria are specific to demonstration projects?

(a) The Secretary considers the extent to which the project's activities are designed to effectively—

(1) Demonstrate an exemplary approach not normally found in programs of bilingual education; (15 points)

(2) Make use of current research findings and exemplary instructional practices in bilingual education; (15 points) and

(3) Produce a plan which describes all the conditions and resources necessary for replication. (15 points)

(b) In assigning points to an application submitted under a priority area described in § 502.11(f), the Secretary gives special consideration to the applicant's approach to that priority area.

(20 U.S.C. 3231)

Subpart E—What Conditions Apply to a Grantee?

§ 502.40 What requirements apply to all grantees?

The requirements that apply under Basic Projects in Bilingual Education (34 CFR 501.40-501.47) also apply under Demonstration Projects.

(20 U.S.C. 3223, 3231)

PART 503—BILINGUAL EDUCATION: STATE EDUCATIONAL AGENCY PROJECTS FOR COORDINATING TECHNICAL ASSISTANCE

Subpart A—General

Sec.
503.1 What general provisions apply to this program?

Subpart B—What Kinds of Activities Does the Department Assist?

503.10 What activities are eligible for assistance?

Subpart C—How Does a State Educational Agency Apply for a Grant?

503.20 What are the requirements when applying for a grant?

Sec.

Subpart D—How Is a Grant Made?

503.30 How are funds distributed to SEAs?
503.31 What selection criteria does the Secretary use?

Subpart E—What Conditions Apply to a Grantee?

503.40 What requirements apply to all grantees?

AUTHORITY: Title VII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561 (20 U.S.C. 3221-3261; 92 Stat. 2268-2284), unless otherwise noted.

SOURCE: 45 FR 23219, Apr. 4, 1980, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—General

§ 503.1 What general provisions apply to this program?

The general provisions of 34 CFR Part 500 apply to this program.

(20 U.S.C. 3231(b)(5))

Subpart B—What Kinds of Activities Does the Department Assist?

§ 503.10 What activities are eligible for assistance?

An SEA is authorized to carry out the following activities:

(a) Assisting in the exchange of information among programs of bilingual education funded under the Act and with State, local, and Federal programs that share similar purposes, goals, and approaches.

(b) Coordinating assistance to LEAs in developing budget and funding strategies for continuing programs of bilingual education when Federal funds are reduced or no longer available.

(c) Coordinating assistance to improve the assessment and use of curriculum materials developed under the Act.

(d) Disseminating information which will help personnel in programs of bilingual education funded under the Act to meet State certification requirements for teachers of bilingual education and for support personnel who work with the programs.

(e) Coordinating the evaluation of the effectiveness of these programs.

(f) Coordinating assistance to improve the quality of instruction and management in these programs.

(g) Coordinating the selection and use of instruments in these programs to measure the language proficiency of—

(1) Children of limited English proficiency;

(2) Personnel employed in the programs; and

(3) Trainers in IHE bilingual education training programs.

(h) Coordinating assistance to improve the quality and reduce the costs of bilingual education data-gathering activities.

(i) Coordinating the development of formal assessment procedures to determine the need for training LEA personnel who are participating in, or preparing to participate in, programs of bilingual education funded under the Act and communicating the identified training needs to the BESCs and EDACs serving the State.

(j) Performing other activities approved in advance by the Secretary as designed to further the coordination of technical assistance to programs of bilingual education funded under the Act.

(20 U.S.C. 3231(b)(5))

Subpart C—How Does a State Educational Agency Apply for a Grant?

§ 503.20 What are the requirements when applying for a grant?

An SEA must provide an assurance that it will comply with the "supplement not supplant" requirement in Section 721(b)(5)(A) of the Act.

(20 U.S.C. 3231(b)(5)(A))

Subpart D—How Is a Grant Made?

§ 503.30 How are funds distributed to SEAs?

(a) The Secretary awards a grant to each SEA that applies if the SEA—

(1) Meets the applicable requirements in the Act and these regulations; and

(2) Submits an application that achieves a score of at least 50 points under the selection criteria.

(b) The Secretary approves only those proposed components of an application that are of sufficient quality, based on the selection criteria, to result in the proper and efficient conduct of the program.

(c) The Secretary permits an SEA to modify and resubmit an application or component of an application that has been disapproved under paragraph (a)(2) or (b) of this section.

(d) The Secretary determines the amount of an award to an SEA according to the provisions of EDGAR (34 CFR 75.232 and 75.233), subject to the limitation of Section 721(b)(5)(B) of the Act.

(20 U.S.C. 3231(b)(5))

§ 503.31 What selection criteria does the Secretary use?

In reviewing an SEA application for assistance, the Secretary uses the following criteria worth a total of 100 possible points:

(a) *Impact.* (25 points)

The Secretary considers the extent to which the project will improve the quality of programs of bilingual education in the State that are funded under the Act.

(b) *Capacity building.* (25 points)

The Secretary considers the extent to which the project activities will increase the capacity of other agencies and organizations to provide technical assistance to programs of bilingual education in the State that are funded under the Act.

(c) *Evaluation plan.* (15 points)

The Secretary reviews each application for information that shows the quality of the evaluation plan. Specifically, the Secretary looks for information showing that the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(d) *Plan of operation.* (10 points)

The Secretary reviews each application for information that shows the quality of the plan of operation for the project. Specifically, the Secretary looks for information that shows—

(1) An effective plan of management that ensures proper and efficient administration of the project;

(2) A clear description of how the objectives of the project relate to the purpose of the program; and

(3) A clear description of the way the applicant plans to use its resources and personnel to achieve each objective.

(e) *Budget.* (5 points)

The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective. Specifically, the Secretary considers—

(1) The adequacy of the budget to support project activities; and

(2) The reasonableness of costs in relation to project objectives.

(f) *Personnel.* (20 points)

The Secretary considers—

(1) The quality of key personnel, as evidenced by—

(i) The qualifications of the project director and other key personnel used in the project (To determine the qualifications of a person, the Secretary considers evidence of experience in fields related to the objectives of the project, as well as other information that the applicant provides.);

(ii) The time that each person plans to commit to the project; and

(iii) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women; and

(C) Handicapped persons; and

(2) The quality of the applicant's plan to recruit and employ bilingual personnel for the project.

(20 U.S.C. 3231(b)(3), (b)(5))

Subpart E—What Conditions Apply to a Grantee?

§ 503.40 What requirements apply to all grantees?

(a) A grantee shall use funds made available under this part to supplement, and to the extent practical, increase the level of funds that, in the absence of the grant, would be made available by the State for coordination of technical assistance to programs of bilingual education in the State, and in no case to supplant those funds.

(b) A grantee shall employ bilingual personnel for the project, to the extent possible.

(20 U.S.C. 3231(b)(3)(H), (b)(5)(A))

PART 504—BILINGUAL EDUCATION: SUPPORT SERVICES PROJECTS

Subpart A—General

Sec.
504.1 What general provisions apply to this program?

Subpart B—What Kinds of Activities Does the Department Assist?

504.10 How are services provided?
504.11 What activities are eligible for assistance under a BESC project?
504.12 What are the service areas for BESCs?
504.13 What activities are eligible for assistance under an EDAC project?
504.14 What are the service areas for EDACs?

Subpart C—[Reserved]

Subpart D—How Is a Grant Made?

504.30 What selection criteria does the Secretary use?

Subpart E—What Conditions Apply to a Grantee?

504.40 What requirements apply to all grantees?

Authority: Title VII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561 (20 U.S.C. 3221-3261; 92 Stat. 2268-2284), unless otherwise noted.

Source: 45 FR 23220, Apr. 4, 1980, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—General

§ 504.1 What general provisions apply to this program?

The general provisions of 34 CFR Part 500 apply to this program.

(20 U.S.C. 3231, 3233)

Subpart B—What Kinds of Activities Does the Department Assist?

§ 504.10 How are services provided?

(a) There are two types of centers authorized for support under this part: Bilingual Education Service Centers (BESCs) and Evaluation, Dissemination, and Assessment Centers (EDACs).

(b) BESCs and EDACs provide services within service areas designated by the Secretary, as provided in § 504.12 (for BESCs) and § 504.14 (for EDACs).

(c) The centers may provide services to programs of bilingual education and bilingual education training programs whether or not these program are funded under the Act.

(20 U.S.C. 3231(a), 3233)

§ 504.11 What activities are eligible for assistance under a BESC project?

A BESC is authorized to carry out the following activities:

(a) Providing training in the areas listed below to assist persons who are participating in, or preparing to participate in, programs of bilingual education or bilingual education training programs:

(1) Understanding the purpose and nature of bilingual education.

(2) Planning, implementing, and evaluating instructional programs and training activities.

(3) Selecting and using instructional and evaluative designs.

(4) Selecting and using assessment instruments to measure the English proficiency of—

(i) Children of limited English proficiency;

(ii) Personnel employed in bilingual education training programs; and

(iii) Trainers in bilingual education programs at IHEs.

(b) Providing training to assist parents of students who are participating in, or preparing to participate in, a program of bilingual education in—

(1) Understanding its goals and purposes;

(2) Participating in its development and implementation;

(3) Participating in its advisory council and advisory committee; and

(4) Obtaining and understanding information regarding the academic progress of their children.

(c) Providing technical assistance to grantees and potential applicants under the Act in the following activities:

(1) Selecting and using instruments for measuring the academic achievement of children of limited English proficiency.

(2) Identifying and using appropriate instructional and supplementary materials.

(3) Identifying and using community resources.

(4) Developing applications for programs under the Act in coordination with the Secretary and the appropriate SEAs.

(d) Carrying out any other activity approved in advance by the Secretary as designed to strengthen programs of bilingual education or bilingual education training programs.

(20 U.S.C. 3231(a), 3233)

§ 504.12 What are the service areas for BESCs?

(a) The Secretary designates geographic areas to be served by BESCs based on the need for the services and for geographical distribution throughout the Nation. The Secretary also may designate one or more language groups to be served in a geographic area.

(b) The Secretary may require a BESC to provide assistance outside its designated service area when that BESC is the best equipped to provide the services needed.

(c) The Secretary announces the service areas in the application notice published in the FEDERAL REGISTER.

(d) The Secretary funds only one project in each of the designated service areas.

(e) An application competes only against other applications proposing to serve the same service area.

(20 U.S.C. 3231(a), 3233)

§ 504.13 What activities are eligible for assistance under an EDAC project?

An EDAC is authorized to carry out the following activities:

(a) Evaluating the effectiveness and appropriateness of materials for use in programs of bilingual education or in bilingual education training programs.

(b) Publishing and disseminating—

(1) Appropriate evaluation methods and materials;

(2) Information on other available resources for evaluating programs of bilingual education; and

(3) Materials developed under the Act.

(c) In cooperation with the SEAs and LEAs within the service area, assessing—

(1) The number of children in need of bilingual education;

(2) The number of and need for bilingual education teachers and other personnel; and

(3) The need for curriculum materials and student assessment instruments.

(d) Developing instruments and procedures for use in needs assessment surveys.

(e) Training SEA personnel and other persons working with programs of bilingual education in the selection of appropriate evaluation and assessment methods and materials.

(f) Carrying out any other activity approved in advance by the Secretary as designed to strengthen programs of bilingual education or bilingual education training programs.

(20 U.S.C. 3231(a)(4))

§ 504.14 What are the service areas for EDACs?

(a) The Secretary designates geographic areas to be served by EDACs based on the need for services and for geographic distribution throughout the Nation. The Secretary also may designate one or more language groups to be served in a geographic area.

(b) The Secretary may require an EDAC to provide assistance outside its designated service area when that EDAC is the best equipped to provide the services needed.

(c) The Secretary announces the service areas in the application notice.

(d) The Secretary funds only one project in each of the designated service areas.

(e) An application competes only against other applications proposing to serve the same service area.

(20 U.S.C. 3231(a)(4))

Subpart C—[Reserved]

Subpart D—How Is a Grant Made?

§ 504.30 What selection criteria does the Secretary use?

In reviewing a Support Services Projects application for assistance, the Secretary considers the following criteria worth a total of 100 possible points:

(a) *Needs assessment.* (15 points)

The Secretary considers the extent to which the applicant has assessed, by reliable and objective means, the needs in the proposed service area.

(b) *Project design.* (15 points)

The Secretary considers the adequacy of the applicant's plans for conducting each of the activities authorized in § 504.11 (for BESCs) or in § 504.13 (for EDACs).

(c) *Coordination.* (15 points)

The Secretary considers the extent to which the applicant has planned for coordination with the National Clearinghouse on Bilingual Education, other service centers (BESCs or EDACs), and SEAs serving programs of bilingual education within the designated service area.

(d) *Evaluation plan.* (10 points)

The Secretary reviews each application for information that shows the quality of the evaluation plan. Specifically, the Secretary looks for information showing that the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Plan of operation.* (10 points)

The Secretary reviews each application for information that shows the quality of the plan of operation for the project. Specifically, the Secretary looks for information that shows—

(1) An effective plan of management that ensures proper and efficient administration of the project;

(2) A clear description of how the objectives of the project relate to the purpose of the program; and

(3) A clear description of the way the applicant plans to use its resources and personnel to achieve each objective.

(f) *Budget.* (5 points)

The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective. Specifically, the Secretary considers—

(1) The adequacy of the budget to support project activities; and

(2) The reasonableness of costs in relation to project objectives.

(g) *Personnel.* (30 points)

The Secretary considers—

(1) The quality of key personnel, as evidenced by—

(i) The qualifications of the project director and other key personnel used in the project (To determine the qualifications of a person, the Secretary considers evidence of experience in fields related to the objectives of the project, as well as other information that the applicant provides.);

(ii) The time that each person plans to commit to the project; and

(iii) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women; and

(C) Handicapped persons;

(2) The quality of the applicant's plan to recruit and employ bilingual personnel for the project; and

(3) The extent to which the personnel who will provide training under the grant are knowledgeable of the history and culture(s) of the principal geographic areas where the native language(s) of the children of limited English proficiency served by programs of bilingual education in the service area is spoken.

(20 U.S.C. 3231(a), (b)(3), 3233)

[45 FR 23220, Apr. 4, 1980; 45 FR 35818, May 28, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

Subpart E—What Conditions Apply to a Grantee?

§ 504.40 What requirements apply to all grantees?

A grantee shall employ bilingual personnel for the project, to the extent possible.

(20 U.S.C. 3231(b)(3)(H))

PART 505—BILINGUAL EDUCATION: MATERIALS DEVELOPMENT PROJECTS PROGRAM

Subpart A—General

Sec.
505.1 What general provisions apply to this program?

Subpart B—What Kinds of Activities Does the Department Assist?

505.10 What activities are eligible for assistance?

Subpart C—[Reserved]

Subpart D—How Is a Grant Made?

505.30 What selection criteria does the Secretary use?

Subpart E—What Conditions Apply to a Grantee?

505.40 What requirements apply to all grantees?

AUTHORITY: Title VII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561 (20 U.S.C. 3221-3261; 92 Stat. 2268-2284), unless otherwise noted.

SOURCE: 45 FR 23227, Apr. 4, 1980, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—General

§ 505.1 What general provisions apply to this program?

The general provisions of 34 CFR Part 500 apply to grants awarded under this program.

(20 U.S.C. 3231 (a)(1), (a)(4))

Subpart B—What Kinds of Activities Does the Department Assist?

§ 505.10 What activities are eligible for assistance?

The following activities are authorized for Materials Development Projects:

(a) Developing, testing, and disseminating instructional and testing materials for use in programs of bilingual education.

(b) Developing instructional materials for use by IHEs in training persons who are participating in, or preparing to participate in, programs of bilingual education.

(c) Conducting needs assessments to determine specific needs for materials development.

(d) Carrying out any other activity which the Secretary approves in advance as necessary for the development of bilingual education materials.

(20 U.S.C. 3231 (a)(1), (a)(4))

Subpart C—[Reserved]

Subpart D—How Is a Grant Made?

§ 505.30 What selection criteria does the Secretary use?

The Secretary uses the following criteria. These criteria are worth a total of 115 possible points:

(a) *Needs identification.* (50 points)

The Secretary considers the extent to which—

(1) The applicant has identified, by reliable and objective means, the nature and magnitude of the needs for the kinds of materials to be developed in the language(s) proposed for the project; (15 points)

(2) The applicant proposes to develop needed materials in languages for which materials are not available commercially; (15 points) and

(3) The project will not duplicate material that is currently available. (20 points)

(b) *Materials evaluation.* (15 points)

The Secretary considers the adequacy of the applicant's plans to test the materials as they are developed to determine whether they meet the needs identified in the application.

(c) *Coordination.* (15 points)

The Secretary considers the applicant's plan for arranging—through coordination with EDACs, agreements with commercial resources, and other similar arrangements—for the testing, publication, and dissemination of the materials to be developed.

(d) *Plan of operation.* (10 points)

The Secretary reviews each application for information that shows the quality of the plan of operation for the project. Specifically, the Secretary looks for information that shows—

(1) An effective plan of management that ensures proper and efficient administration of the project;

(2) A clear description of how the objectives of the project relate to the purpose of the program; and

(3) A clear description of the way the applicant plans to use its resources and personnel to achieve each objective.

(e) *Budget.* (5 points)

The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective. Specifically, the Secretary considers—

(1) The adequacy of the budget to support project activities; and

(2) The reasonableness of costs in relation to project objectives.

(f) *Personnel.* (20 points)

The Secretary considers—

(1) The quality of key personnel, as evidenced by—

(i) The qualifications of the project director and other key personnel used in the project (To determine the qualifications of a person, the Secretary considers evidence of experience in fields related to the objectives of the project, as well as other information that the applicant provides.);

(ii) The time that each person plans to commit to the project; and

(iii) The extent to which the applicant, as part of its non-discriminatory employment practices, encourages application for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women; and

(C) Handicapped persons; and

(2) The quality of the applicant's plan to recruit and employ for the project bilingual personnel who are knowledgeable of the history and culture(s) of the principal geographic areas where the language(s) for which materials are to be developed is spoken.

(20 U.S.C. 3231(a)(1), (a)(4), and (b)(3))

Subpart E—What Conditions Apply to a Grantee?

§ 505.40 What requirements apply to all grantees?

A grantee shall employ bilingual personnel for the project, to the extent possible.

(20 U.S.C. 3231(b)(3)(H))

PART 510—BILINGUAL EDUCATION: TRAINING PROJECTS

Subpart A—General

Sec.
510.1 What general provisions apply to this program?

Subpart B—What Kinds of Activities Does the Department Assist?

510.10 What activities are eligible for assistance?

Subpart C—How Does One Apply for a Grant?

510.20 What combination of activities may be included in one application?
510.21 What requirements pertain to advisory councils and advisory committees?

Subpart D—How Is a Grant Made?

510.30 What are the funding procedures?
510.31 What selection criteria does the Secretary use for applications proposing to provide training programs at institutions of higher education?
510.32 What selection criteria does the Secretary use for applications proposing to provide short-term or year-round training institutes?
510.33 What selection criteria does the Secretary use for applications proposing to provide training projects for SEA personnel?
510.34 What factors does the Secretary consider in awarding grants?

Subpart E—What Conditions Apply to a Grantee?

Sec.
510.40 What requirements apply to all grantees?
510.41 What requirements apply to grantees carrying out degree-granting training activities at institutions of higher education?
510.42 What requirements pertain to the establishment of an advisory committee?

AUTHORITY: Title VII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561 (20 U.S.C. 3221-3261; 92 Stat. 2268-2284), unless otherwise noted.

SOURCE: 45 FR 23222, Apr. 4, 1980, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—General

§ 510.1 What general provisions apply to this program?

The general provisions of 34 CFR Part 500 apply to this program.

(20 U.S.C. 3233)

Subpart B—What Kinds of Activities Does the Department Assist?

§ 510.10 What activities are eligible for assistance?

The following activities are authorized for Training Projects.

(a) Providing training that leads to an undergraduate degree or teaching credential with a specialization in bilingual education.

(b) Encouraging reform, innovation, and improvement in bilingual education training programs at IHEs by—

(1) Developing curricula for bilingual education training programs at IHEs;

(2) Providing training to improve language, research, instructional, or administrative skills of faculty members at IHEs who are directly involved in training personnel for programs of bilingual education; and

(3) Recruiting or retaining qualified bilingual faculty at IHEs to perform the activities authorized in paragraphs (b) (1) and (2) of this section.

(c) Providing specialized graduate bilingual education degree curricula in areas such as administration and supervision, guidance and counseling, evaluation, and curriculum development.

(d) Providing short-term or year-round training institutes designed to improve the skills of parents and other participants in the institutes in carrying out their responsibilities in programs of bilingual education.

(e) Providing non-degree training programs to increase the skills of SEA personnel in carrying out their responsibilities with regard to programs of bilingual education.

(20 U.S.C. 3233 (a)(1), (a)(7))

Subpart C—How Does One Apply for a Grant?

§ 510.20 What combination of activities may be included in one application?

(a) An applicant may submit an application which proposes—

(1) Any one or combination of the activities described in § 510.10 (a), (b), and (c), but not the activities described in paragraph (b) alone;

(2) The activities described in § 510.10(d) that are designed exclusively for parents;

(3) The activities described in § 510.10(d) that are designed for any participants, including parents; or

(4) The activities described in § 510.10(e).

§ 510.21 What requirements pertain to advisory councils and advisory committees?

An applicant that proposes a training project designed to provide preservice or inservice training to persons who are participating in, or preparing to participate in, programs of bilingual education in a particular LEA or LEAs shall—

(a) Comply with the requirements in 34 CFR 501.20 (a) and (b) pertaining to advisory councils; and

(b) Submit with its application an assurance that, in carrying out its project, it will provide for continuing consultations with, and participation by, the advisory committee described in § 510.42.

[46 FR 44141, Sept. 2, 1981]

Subpart D—How Is a Grant Made?

§ 510.30 What are the funding procedures?

(a) The Secretary reviews separately—

(1) Applications proposing any of the activities described in § 510.10 (a), (b), and (c);

(2) Applications proposing the activities described in § 510.10(d) that are designed exclusively for parents;

(3) Applications proposing activities described in § 510.10(d) that are designed for any participants, including parents; and

(4) Applications proposing the activity described in § 510.10(e).

(b) The Secretary announces the approximate amount of funds available for each competition in the application notice published in the FEDERAL REGISTER.

(20 U.S.C. 3233(a)(1))

§ 510.31 What selection criteria does the Secretary use for applications proposing to provide training programs at institutions of higher education?

The Secretary considers the following criteria worth a total of 110 possible points:

(a) *Impact.* (20 points)

The Secretary considers the extent to which the project will increase the number or qualifications of professional educational personnel who are participating in, or preparing to participate in, programs of bilingual education.

(b) *Instructional program design.* (20 points)

The Secretary considers the extent to which—

(1) The project will incorporate the use of both English and the language(s) studied in the program as mediums of instruction; and

(2) The project includes field experience for participants.

(c) *Commitment and capacity.* (20 points)

The Secretary considers—

(1) The commitment of the IHE to the operation of the project as evidenced by the IHE's plans for reducing Federal contributions during the grant period without reducing the scope of the project; and

(2) The extent to which the project will build the capacity of the IHE to support bilingual education training programs when Federal funds are reduced or no longer available.

(d) *Evaluation plan.* (5 points)

The Secretary reviews each application for information that shows the quality of the evaluation plan. Specifically, the Secretary looks for information showing that the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Plan of operation.* (10 points)

The Secretary reviews each application for information that shows the quality of the plan of operation for the project. Specifically, the Secretary looks for information that shows—

(1) An effective plan of management that ensures proper and efficient administration of the project;

(2) A clear description of how the objectives of the project relate to the purpose of the program;

(3) A clear description of the way the applicant plans to use its resources and personnel to achieve each objective; and

(4) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women; and

(iii) Handicapped persons.

(f) *Budget.* (5 points)

The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective. Specifically, the Secretary considers—

(1) The adequacy of the budget to support project activities; and

(2) The reasonableness of costs in relation to project objectives.

(g) *Personnel.* (30 points)

The Secretary considers—

(1) The quality of key personnel, as evidenced by—

(i) The qualifications of the project director and other key personnel used in the project (To determine the qualifications of a person, the Secretary considers evidence of experience in fields related to the objectives of the project, as well as other information that the applicant provides.);

(ii) The time that each person plans to commit to the project; and

(iii) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women; and

(C) Handicapped persons;

(2) The quality of the applicant's plan to recruit and employ bilingual personnel for the project; and

(3) The extent to which the applicant will recruit and employ training personnel who are knowledgeable of the history and culture(s) of the principal geographic areas where the language(s) studied in the IHE's training program is spoken.

(20 U.S.C. 3233(a)(1))

§ 510.32 What selection criteria does the Secretary use for applications proposing to provide short-term or year-round training institutes?

The Secretary considers the following criteria worth a total of 85 points:

(a) *Impact.* (45 points)

The Secretary considers the extent to which—

(1) The project affords promise of developing innovative approaches to training which will benefit programs of bilingual education;

(2) The project will increase the participants' knowledge and understanding of the objectives of bilingual education and ways of meeting the needs of children of limited English proficiency; and

(3) The project will improve the skills of the participants in carrying out their responsibilities in programs of bilingual education.

(b) *Evaluation plan.* (5 points)

The Secretary reviews each application for information that shows the quality of the evaluation plan. Specifically, the Secretary looks for information showing that the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(c) *Plan of operation.* (10 points)

The Secretary reviews each application for information that shows the quality of the plan of operation for the project. Specifically, the Secretary looks for information that shows—

(1) An effective plan of management that ensures proper and efficient administration of the project;

(2) A clear description of how the objectives of the project relate to the purpose of the program;

(3) A clear description of the way the applicant plans to use its resources and personnel to achieve each objective; and

(4) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women; and

(iii) Handicapped persons.

(d) *Budget.* (5 points)

The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective. Specifically, the Secretary considers—

(1) The adequacy of the budget to support project activities; and

(2) The reasonableness of costs in relation to project objectives.

(e) *Personnel.* (20 points)

The Secretary considers—

(1) The quality of key personnel, as evidenced by—

(i) The qualifications of the project director and other key personnel used in the project (To determine the qualifications of a person, the Secretary considers evidence of experience in fields related to the objectives of the project, as well as other information that the applicant provides.);

(ii) The time that each person plans to commit to the project; and

(iii) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women; and

(C) Handicapped persons; and

(2) The quality of the applicant's plan to recruit and employ bilingual personnel for the project.

(20 U.S.C. 3233(a)(1))

[45 FR 23222, Apr. 4, 1980; 45 FR 35818, May 28, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 46 FR 44141, Sept. 2, 1981]

§ 510.33 What selection criteria does the Secretary use for applications proposing to provide training projects for SEA personnel?

The Secretary considers the following criteria worth a total of 100 possible points:

(a) *Impact.* (20 points)

The Secretary considers the extent to which the activities are designed to improve the skills of SEA staff who are involved with or will be involved with bilingual education and have not received training in that field.

(b) *Training objectives and design.* (30 points)

The Secretary considers—

(1) The extent to which the training objectives are—

(i) Clear and specific;

(ii) Measurable;

(iii) Related to the duties and responsibilities of the participants; and

(iv) Based on an assessment of training needs in the SEA; and

(2) The extent to which the training will provide field based experience.

(c) *Commitment.* (15 points)

The Secretary considers the level of the SEA's commitment to the project as evidenced by its plans for continued training of its personnel when Federal funding is reduced or no longer available.

(d) *Evaluation plan.* (10 points)

The Secretary reviews each application for information that shows the quality of the evaluation plan. Specifically, the Secretary looks for information showing that the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Plan of operation.* (10 points)

The Secretary reviews each application for information that shows the quality of the plan of operation for the project. Specifically, the Secretary looks for information that shows—

(1) An effective plan of management that ensures proper and efficient administration of the project;

(2) A clear description of how the objectives of the project relate to the purpose of the program;

(3) A clear description of the way the applicant plans to use its resources and personnel to achieve each objective; and

(4) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women; and

(iii) Handicapped persons.

(f) *Personnel.* (15 points)

The Secretary considers—

(1) The quality of key personnel as evidenced by—

(i) The qualifications of the project director and other key personnel used in the project (To determine the qualifications of a person, the Secretary considers evidence of experience in fields related to the objectives of the project, as well as other information that the applicant provides.);

(ii) The time that each person plans to commit to the project; and

(iii) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women; and

(C) Handicapped persons.

(2) The quality of the applicant's plan to recruit and employ bilingual personnel for the project; and

(3) The extent to which the applicant will recruit and employ training personnel who are knowledgeable of the history and culture(s) of the principal geographic areas where the

native language(s) of the children of limited English proficiency served in programs of bilingual education in the State is spoken.

(20 U.S.C. 3233(a)(1))

§ 510.34 What factors does the Secretary consider in awarding grants?

(a) The Secretary considers the following factors in awarding a grant:

(1) The rank order of the application as determined by applying the selection criteria in § 510.31 (for applications proposing to provide training programs at institutions of higher education), § 510.32 (for applications proposing to provide short-term or year-round training institutes), or § 510.33 (for applications proposing to provide training projects for SEA personnel).

(2) The need for the training project in the area to be served by the applicant.

(b) In determining need under paragraph (a)(2) of this section, the Secretary considers—

(1) The number of children of limited English proficiency who would benefit from the training to be provided to persons participating in the project;

(2) The number and kinds of personnel currently participating in or preparing to participate in programs of bilingual education for these children, compared to the number and kinds of personnel needed; and

(3) The number and kinds of personnel that applicants propose to train under this program and other programs supported under the Act.

(c) In determining need under paragraph (a)(2) of this section, the Secretary uses—

(1) Information provided by the applicant;

(2) Information provided by the SEA under 34 CFR 500.20;

(3) Information on current and past training activities supported under the Act; and

(4) Other statistical information available to the Secretary.

(20 U.S.C. 3231(c), 3233(a)(1))

[46 FR 44141, Sept. 2, 1981]

Subpart E—What Conditions Apply to a Grantee?

§ 510.40 What requirements apply to all grantees?

(a) A grantee shall employ bilingual personnel for the project, to the extent possible.

(b) A grantee shall give priority to training persons who—

(1) Are bilingual; and

(2) Demonstrate a high degree of interest in bilingual education.

(20 U.S.C. 3231, 3233(a)(1))

§ 510.41 What requirements apply to grantees carrying out degree-granting training activities at institutions of higher education?

A grantee that is carrying out an activity authorized under § 510.10 (a) or (c) shall require that all participants in its training program(s) demonstrate proficiency in English and in the language(s) to be studied as a condition of successful completion of the program(s).

(20 U.S.C. 3233(a)(1))

§ 510.42 What requirements pertain to the establishment of an advisory committee?

(a) A grantee carrying out training activities designed to provide preservice or inservice training to persons who are participating in, or preparing to participate in, programs of bilingual education in a particular LEA or LEAs shall—

(1) Establish an advisory committee within 60 days after it receives an award; and

(2) Provide for continuing consultation with the committee in carrying out its project.

(b) The members of the committee must be selected by parents of children who are or will be participating in programs of bilingual education in that LEA.

(c) Parents of children who are or will be participating in programs of bilingual education in that LEA must be a majority of the committee.

(d) In the case of projects to train persons to participate more effective in programs of bilingual education at secondary schools, the committee must include representatives of the students who would be served under those programs of bilingual education.

(e) The committee may also include—

(1) Parents of children attending schools in that LEA;

(2) Teachers in that LEA; and

(3) Other interested individuals.

(f) A member of the advisory council described in § 510.21 also may serve as a member of the advisory committee.

(20 U.S.C. 3223(a)(4)(E), 3233(a)(8))

[46 FR 44141, Sept. 2, 1981]

PART 514—BILINGUAL EDUCATION: SCHOOL OF EDUCATION PROJECTS

Subpart A—General

Sec.

514.1 What general provisions apply to this program?

514.2 What is a school of education?

Subpart B—What Kinds of Activities Does the Department Assist?

514.10 What activities are eligible for assistance?

514.11 What priorities may the Secretary establish?

Subpart C—[Reserved]

Subpart D—How Is a Grant Made?

514.30 What selection criteria does the Secretary use?

514.31 What is the anticipated funding pattern?

Subpart E—What Conditions Apply to a Grantee?

514.40 How are the activities to be carried out?

514.41 What requirements apply to all grantees?

Authority: Title VII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561 (20 U.S.C. 3221-3261; 92 Stat. 2268-2284), unless otherwise noted.

Source: 45 FR 23224, Apr. 4, 1980, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—General

§ 514.1 What general provisions apply to this program?

The general provisions of 34 CFR Part 500 apply to this program.

(20 U.S.C. 3233)

§ 514.2 What is a school of education?

As used in this part, a "school of education" includes a school, department, or college of education, or a bilingual education training program, at any IHE.

(20 U.S.C. 3233(a)(1))

Subpart B—What Kinds of Activities Does the Department Assist?

§ 514.10 What activities are eligible for assistance?

An IHE may carry out the following activities:

(a) Planning and developing a program leading to a professional credential with a specialization in bilingual education.

(b) Planning and developing specialized programs in bilingual education in areas such as special education, reading, research and evaluation, counseling, early childhood education, and curriculum and instruction.

(c) Developing the capacity of the IHE to undertake the training activities described in 34 CFR 510.10 (a) or (c).

(20 U.S.C. 3233(a)(1))

§ 514.11 What priorities may the Secretary establish?

(a) Each year, the Secretary may establish priorities among the activities described in § 514.10.

(b) The Secretary announces the priorities selected and the approximate amount of funds reserved for the priorities in the application notice.

(c) Applications submitted under selected priority areas compete against other applications submitted under those priority areas for funds allocated to those priority areas.

(20 U.S.C. 3233(a)(1))

Subpart C—[Reserved]

Subpart D—How Is a Grant Made?

§ 514.30 What selection criteria does the Secretary use?

In reviewing a School of Education application for assistance, the Secretary uses the following criteria worth a maximum of 100 possible points:

(a) *Need.* (25 points)

The Secretary considers the magnitude of need in the applicant's geographic area for establishing or expanding bilingual education training programs at IHE's in the language(s) proposed by the applicant.

(b) *Impact.* (25 points)

The Secretary considers the extent to which the project's activities will—

(1) Improve the instructional program in bilingual education training at the IHE;

(2) Increase the IHE's capacity to train persons who are participating in, or preparing to participate in, programs of bilingual education; and

(3) Integrate the bilingual education training program with related programs of study offered by the IHE.

(c) *Commitment and capacity.* (15 points)

The Secretary considers—

(1) The applicant's level of commitment, as evidenced by the amount of time that the head of the school of education will devote to the project; and

(2) The applicant's plans to provide resources to ensure the success of the project.

(d) *Plan of operation.* (10 points)

The Secretary reviews each application for information that shows the quality of the plan of operation for the project. Specifically, the Secretary looks for information that shows—

(1) An effective plan of management that ensures proper and efficient administration of the project;

(2) A clear description of how the objectives of the project relate to the purpose of the program; and

(3) A clear description of the way the applicant plans to use its resources and personnel to achieve each objective.

(e) *Personnel.* (25 points)

The Secretary considers—

(1) The extent to which the applicant has recruited or plans to recruit for the project a faculty member(s) who has demonstrated experience in and commitment to bilingual education; (10 points)

(2) The quality of the applicant's plan to recruit and employ for the project a faculty member(s) who is bilingual; (5 points) and

(3) The extent to which the applicant will recruit and employ for the project a faculty member(s) who is knowledgeable in the history and culture(s) of the principal geographic areas where the language(s) proposed in the application is spoken; (5 points) and

(4) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women; and

(iii) Handicapped persons. (5 points)

(20 U.S.C. 3233(a))

§ 514.31 What is the anticipated funding pattern?

The Secretary reimburses the IHE for the salary of the faculty member(s) employed for this project according to the following schedule:

(a) First year—up to 100 percent of the total cost.

(b) Second year—up to ⅔ of the total cost.

(c) Third year—up to ⅓ of the total cost.

(20 U.S.C. 3233(a)(1))

Subpart E—What Conditions Apply to a Grantee?

§ 514.40 How are the activities to be carried out?

(a) A grantee shall appoint one or more full-time faculty members to the project to design the program and provide leadership for its implementation.

(b) The faculty member(s) must report directly to the head of the school of education.

(c) In hiring the faculty member(s), the grantee shall—

(1) To the extent possible employ a faculty member(s) for the project who is bilingual and has experience in, and commitment to, bilingual education; and

(2) Give consideration to qualified applicants who have completed their doctoral training in the Fellowship Program.

(d) The grantee may not provide teaching responsibilities to the faculty members during the first year of the project.

(e) In the second and third year of the project, the grantee may assign teaching responsibilities to the faculty member(s) in proportion to the grantee's contribution to that person's salary.

(20 U.S.C. 3231(b)(3)(H), 3233(a)(1))

§ 514.41 What requirements apply to all grantees?

(a) If the IHE awards tenure, it shall provide equal opportunity for tenure to the faculty member(s) hired for the project.

(b) Funds used to hire a faculty member(s) for the project must be in addition to funds that otherwise would have been spent for bilingual education training programs at the IHE.

(c) The grantee shall provide from its own resources adequate office space and supplies for the conduct of the project.

(d) The grantee shall coordinate the project's activities with existing bilingual education training and teacher preparation programs at the IHE.

(20 U.S.C. 3233(a)(1))

PART 515—BILINGUAL EDUCATION: FELLOWSHIP PROGRAM

Subpart A—General

Sec.

515.1 What general provisions apply to this program?

Subpart B—How Does an IHE Obtain Approval of Its Application for Participation?

Sec.

515.10 How does an IHE apply for participation in the Fellowship Program?
515.11 How does the Secretary review applications for participation?
515.12 How does the Secretary approve IHEs?

Subpart C—How Does an Individual Apply for a Fellowship?

515.20 Where does an individual apply?

Subpart D—How Are Fellows Selected?

515.30 How does the Secretary select new fellows?

Subpart E—What Conditions Apply to a Fellowship Recipient?

515.40 What is the period of a fellowship?
515.41 What is the service requirement for a fellowship?
515.42 What are the requirements for repayment of the fellowship?
515.43 What is the repayment schedule?
515.44 What interest is charged
515.45 Under what circumstances is repayment deferred?
515.46 What is the length of the deferment of repayment?
515.47 Under what circumstances is repayment waived?
515.48 How shall the recipient begin to account for his or her obligation?

AUTHORITY: Title VII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561 (20 U.S.C. 3221-3261; 92 Stat. 2268-2284), unless otherwise noted.

SOURCE: 45 FR 23225, Apr. 4, 1980, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—General

§ 515.1 What general provisions apply to this program?

The general provisions of 34 CFR Part 500 apply to this program.

(20 U.S.C. 3233)

Subpart B—How Does an IHE Obtain Approval of Its Application for Participation?

§ 515.10 How does an IHE apply for participation in the Fellowship Program?

An IHE submits an application for participation which—

(a) Provides evidence of the IHE's eligibility; and

(b) Addresses the criteria in § 515.11.

(20 U.S.C. 3233(a)(2))

§ 515.11 How does the Secretary review applications for participation?

In reviewing an application for participation, the Secretary considers the quality of the IHE's graduate program of study in the field of bilingual education training, with emphasis on the following factors:

(a) The extent to which the program has been adopted as a permanent graduate program of study offered by the IHE, as evidenced by—

(1) The organizational placement of the program; and

(2) The staff and resources which the IHE has invested in the program.

(b) The qualifications of faculty members of the program, especially with regard to—

(1) Their bilingual competency;

(2) Their knowledge of the history and culture of the United States and of the principal geographic areas where the language(s) proposed for training is spoken;

(3) Their professional status in the IHE;

(4) The nature of their work; and

(5) The percentage of time they will spend on the program.

(c) The quality of the instructional program, including—

(1) The extent to which it will adequately prepare students to train teachers in elementary and secondary schools in teaching, testing, research, and linguistic skills;

(2) The extent to which it incorporates bilingual instruction;

(3) The quality of the standards used to determine satisfactory progress in, and completion of, the program; and

(4) The interdisciplinary aspects of the program.

(d) The extent to which the program provides field based experience through arrangements with LEAs, SEAs, and persons or organizations with expertise in bilingual education teacher training.

(20 U.S.C. 3233(a)(2))

§ 515.12 How does the Secretary approve IHEs?

(a) The Secretary determines whether to approve an IHE for participation with regard to one or more languages based on—

(1) The quality of the application;

(2) The IHE's plans for recruiting and selecting nominees using the criteria in § 515.30(d); and

(3) The relative needs for bilingual education teachers by region and language.

(b) The Secretary designates the maximum number of fellowships by language that may be awarded at the IHE based on—

(1) The IHE's capacity to prepare teacher trainers in bilingual education; and

(2) The relative needs for bilingual education teachers by region and language.

(20 U.S.C. 3233(a)(2))

Subpart C—How Does an Individual Apply for a Fellowship?

§ 515.20 Where does an individual apply?

(a) An individual submits an application for a fellowship to the participating IHE(s) which he or she wishes to attend.

(b) Each participating IHE establishes procedures for receipt of applications from individuals.

(20 U.S.C. 3233(a)(2))

Subpart D—How Are Fellows Selected?

§ 515.30 How does the Secretary select new fellows?

(a) Each participating IHE shall forward to the Secretary the names of individuals nominated for new fellowships who have been accepted for enrollment in the proposed program of study.

(b) An IHE shall designate nominees in rank order by language and provide justification for the recommendations based on the criteria in paragraph (d) of this section.

(c) The Secretary selects fellows according to the rank orders prepared by the IHE, subject to the maximum number of fellowships per language designated for that IHE.

(d) In recommending its nominees, the IHE shall apply the following criteria:

(1) *Academic Record.* The quality of the academic record of the applicant.

(2) *Bilingual Proficiency.* The applicant's proficiency in English and the language(s) to be studied.

(3) *Experience.* The quality and extent of the applicant's experience in providing services to, teaching, and administering programs of bilingual education.

(20 U.S.C. 3233(a)(2))

Subpart E—What Conditions Apply to a Fellowship Recipient?

§ 515.40 What is the period of a fellowship?

A fellowship remains in effect only for the period that the recipient maintains satisfactory progress in an eligible program of study.

(20 U.S.C. 3233(a)(2))

§ 515.41 What is the service requirement for a fellowship?

(a) Upon selection for a fellowship, the recipient shall sign an agreement provided by the Secretary to work in one or more of the following activities for a period of time equivalent to the period of time for which he or she received assistance under the fellowship:

(1) Training personnel to develop and conduct bilingual education programs at IHEs.

(2) Conducting research related to training bilingual education personnel.

(3) Conducting evaluations of programs designed to train bilingual education personnel.

(4) Developing curriculum materials designed for bilingual instruction.

(5) Training personnel employed by SEAs, LEAs, or nonprofit private organizations to meet the needs of students of limited English proficiency.

(6) Training parents or community advisory groups in school districts serving children of limited English proficiency.

(7) Working full-time as an employee of an SEA unit which coordinates training and technical assistance to programs of bilingual education or an SEA unit concerned with the certification of teachers in these programs.

(8) Working in any other activity that relates to training bilingual education personnel which has been approved in advance by the Secretary.

(b) A recipient shall begin working in one of these authorized activities within one year of the date he or she ceases to be enrolled at an IHE as a full-time student.

(20 U.S.C. 3233(a)(6))

§ 515.42 What are the requirements for repayment of the fellowship?

(a) If a recipient does not work in one of the activities described in § 515.40, he or she shall repay the amount of the fellowship.

(b) The Secretary prorates the amount a recipient is required to repay based on the length of time the recipient worked in an authorized activity compared with the length of time during which he or she received assistance.

(20 U.S.C. 3233(a)(6))

§ 515.43 What is the repayment schedule?

A recipient required to repay the amount of a fellowship shall—

(a) Begin repayments within one year of the date he or she ceases to be enrolled as a full-time student at an IHE;

(b) Repay the amount owed in equal monthly installments of at least $30 each; and

(c) Repay the required amount, including interest, no later than 15 years after the beginning of the repayment period. This period is extended if the Secretary grants a deferment.

(20 U.S.C. 3233(a)(6))

§ 515.44 What interest is charged?

(a) The Secretary charges a recipient interest on the unpaid balance owed by the recipient at the rate of seven percent per year.

(b) No interest is charged for the period of time—

(1) That precedes the date on which the recipient is required to commence repayment; or

(2) During which repayment has been deferred.

(20 U.S.C. 3233(a)(6))

§ 515.45 Under what circumstances is repayment deferred?

The Secretary may defer repayment if the recipient—

(a) Suffers from a serious physical or mental disability that prevents or substantially impairs the recipient's employability in authorized work;

(b) Is unable to secure employment in any of the authorized work activities;

(c) Re-enrolls as a full-time student at an IHE;

(d) Is a member of the Armed Forces of the United States;

(e) Is in service as a volunteer under the Peace Corps Act;

(f) Is a full-time volunteer under Title I of the Domestic Volunteer Service Act of 1973; or

(g) Demonstrates to the Secretary's satisfaction the existence of circumstances that prevents him or her from making a scheduled payment(s).

(20 U.S.C. 3233(a)(6))

§ 515.46 What is the length of the deferment of repayment?

(a) A recipient shall renew a deferment on a yearly basis, unless the Secretary determines otherwise.

(b) Deferments for military, Peace Corps, or Domestic Volunteer service may not exceed three years.

(20 U.S.C. 3233(a)(6))

§ 515.47 Under what circumstances is repayment waived?

The Secretary may waive repayment if the recipient—

(a) Suffers from a serious physical or mental disability that permanently prevents or substantially impairs the recipient's employability in authorized work; or

(b) Demonstrates the existence of other extraordinary circumstances that justify a waiver.

(20 U.S.C. 3233(a)(6))

§ 515.48 How shall the recipient begin to account for his or her obligation?

(a) Within one year of the date a recipient ceases to be enrolled as a full-time student at an IHE, the recipient shall submit to the Secretary one of the following items:

(1) A description of the authorized work in which he or she is employed.

(2) The first monthly payment required under §§ 515.42-515.43; or

(3) A request for a deferment or waiver as described in §§ 515.45-515.47, accompanied by a statement of justification.

(b) A recipient who submits a description of authorized work under paragraph (a)(1) of this section shall notify the Secretary on a yearly basis of the period of time during the preceding year that he or she was employed in such work.

(20 U.S.C. 3233(a)(6))

PART 520—BILINGUAL EDUCATION: DESEGREGATION SUPPORT PROGRAM

Subpart A—General

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520.40 What requirements pertain to all grantees?
520.41 What additional requirement pertains to grantees carrying out an instructional program of a bilingual-bicultural education?
APPENDIX B—BILINGUAL EDUCATION: GENERAL PROVISIONS

AUTHORITY: Section 751 of the Title VII Elementary and Secondary Education Act, Pub. L. 95-561, 20 U.S.C. 3261.

SOURCE: 46 FR 37596, July 21, 1981, unless otherwise noted.

Subpart A—General

§ 520.1 What is the Desegregation Support Program?

(a) The purpose of this program is to provide assistance to eligible local educational agencies (LEAs) that-

(1) Are implementing qualifying desegregation plans; and

(2) Have eligible minority group children enrolled in schools participating in the qualifying desegregation plans.

(b) This program supports two types of projects designed to complement an LEA's qualifying desegregation plan and to meet the special educational needs of eligible minority group children:

(1) Bilingual-bicultural curriculum development projects that develop curriculum for use in instructional programs of bilingual-bicultural education;

(2) Projects that implement instructional programs of bilingual-bicultural education.

(20 U.S.C. 3261(a))

§ 520.2 (See 34 CFR 500.2(g)—Who is eligible for assistance under these programs?)

§ 520.3 What regulations govern this program?

(a) The following regulations apply to grants awarded under this program:

(1) The regulations in this part (34 CFR Part 520)

(2) The Bilingual Education: General Provisions (34 CFR Part 500) with the following exceptions:

(i) The definitions in 34 CFR 500.4 do not apply. Definitions for this program are contained in this part (34 CFR 520.4).

(ii) The Secretary approves a project period of from one to three years.

(3)(i) Emergency School Aid Act regulations which implement Sections 606(a) and 606(c) of the Emergency School Aid Act, specifically those sections in the regulations which govern—

(A) Limitations on eligibility (34 CFR 280.21-280.24);

(B) Continuing conditions of eligibility (34 CFR 280.26);

(C) Show cause conferences (34 CFR 280.27);

(D) Waivers of ineligibility (34 CFR 280.28-280.32); and

(E) Qualifying plans (34 CFR 280.42(a)-(c)).

(ii) For the purposes of this program, the term "under the Act" as used in the Emergency School Aid Act regulations cited in this section (34 CFR 520.3(A)(3)(i)) shall mean "under Section 751 of the Bilingual Education Act.

§ 520.4 What definitions apply?

In addition to terms defined in EDGAR (34 CFR Part 77), the following terms are used in this part:

"Act" means the Bilingual Education Act, Title VII of the Elementary and Secondary Education Act of 1965, as amended.

(20 U.S.C. 3221)

"Curriculum" is considered to encompass the instructional activities, including the use of materials, planned and provided for students by the school or school system. The curriculum, therefore, is the planned interaction of students with instructional content, instructional resources, and instructional processes for the attainment of educational objectives.

(20 U.S.C. 3261)

"Emergency School Aid Act" means the Emergency School Aid Act, Title VI of the Elementary and Secondary Education Act of 1965, as amended.

(20 U.S.C. 3191)

"Instructional program of bilingual-bicultural education" means a program of instruction designed to meet the special educational needs of minority group children in elementary and secondary schools and having the following characteristics:

(1) There is instruction given in, and study of, English and the native language of the parents and grandparents of the minority group children.

(2) Instruction is given with appreciation for the heritage of the minority group children and of other children in American society.

(20 U.S.C. 3261(a)(1)(A))

"Minority group children" means children who are from environments in which the native language is other than English and who, as a result of language barriers and cultural differences, do not have equal educational opportunity.

(20 U.S.C. 3207(6), 3261)

"Native language" means the language normally used by an individual, or in the case of a child, the language normally used by the parents or grandparents of the child.

(20 U.S.C. 3261(a)(1))

"Qualifying desegregation plan" means the desegregation plan that satisfies the requirements of Section 606 of the Emergency School Aid Act (ESAA) and qualifies an LEA for assistance under this program.

(20 U.S.C. 3261)

Subpart B—What Kinds of Projects Does the Secretary Assist?

§ 520.10 What activities are eligible for assistance?

The Secretary funds two types of projects which must be designed to complement the LEA's qualifying desegregation plan.

(a) *Bilingual-bicultural curriculum development projects.* An eligible LEA, or a nonprofit private organization that has received a request for curriculum development from one or more eligible LEAs may propose to develop curriculum for use in instructional programs of bilingual-bicultural education. This curriculum is designed to—

(1) Increase the skills of minority group children in understanding, speaking, reading, and writing both English and the native language of the parents or grandparents or the minority group children;

(2) Enhance the understanding of minority group children and their classmates about the history and cultural backgrounds of the minority group children; and

(3) Complement the LEA's qualifying desegregation plan.

(b) *Instructional programs of bilingual-bicultural education.*

(1) An eligible LEA may propose to implement—

(i) Curriculum developed under paragraph (a) of this section; or

(ii) Any other curriculum that the Secretary determines meets the requirements in paragraph (a) of this section.

(2) In its plan to implement an instructional program of bilingual-bicultural education, an LEA shall provide, as necessary, training for teachers, principals, and other educational personnel who work with minority group children, to enable them to provide services more effectively to those children.

(20 U.S.C. 3231(a)(2) and 3261(a)(1) and (b))

Subpart C—How Does One Apply for a Grant?

§ 520.20 What requirements pertain to project committees?

(a) An LEA applying for a bilingual-bicultural curriculum development project or an instructional program of bilingual-bicultural education shall establish a project committee meeting the requirements of paragraph (b) of this section that will fully participate in the preparation of the application and in the implementation of the project and join in submitting the application.

(b) (1) The project committee must be broadly representative of parents, school officials, teachers, and other interested members of the community or communities to be served.

(2) At least half of the committee members must be parents.

(3) At least half of the committee members must be members of the minority group(s) whose educational needs the project is intended to meet.

(c) The LEA may use the following procedures, or other procedures it determines appropriate, to meet the requirements of paragraph (b):

(1) Solicit nominations for project committee membership from parents, other representatives of minority group children, and interested members of the community or communities to be served.

(2) Publish a solicitation of nominations for membership in a manner likely to bring the solicitation to the attention of potential members; for example, publication of an announcement in a local newspaper or other local publication.

(3) Include at least seven members on the committee.

(d) The LEA shall provide the project committee with adequate resources (as determined by the LEA), including staff with language skills in the native language of the committee members.

(e) The LEA shall submit with its application—

(1)(i) Documentation of its consultations with the project committee;

(ii) The project committee's comments on the application; and

(iii) Documentation of support for the project signed by the majority of the members of the project committee; and

(2) An assurance that in carrying out its project, the applicant will provide for frequent consultations with, and participation by, the project committee.

(f) The requirements in paragraphs (a) through (e) of this section apply to a nonprofit organization applying for a bilingual-bicultural curriculum development project, with the following exceptions:

(1) The committee must consist of at least ten persons; and

(2) The committee must exercise policy-making authority with respect to the program or project.

(20 U.S.C. 3223(a)(4)(E) and 3261(a)(2))

§ 520.21 How does the Secretary provide for the participation of children enrolled in nonprofit private schools in an instructional program of bilingual-bicultural education?

(a) An applicant shall provide for the participation in its project of minority group children enrolled in nondiscriminating nonprofit private schools in the LEA, whose participation would assist in achieving the purposes of the LEA's qualifying desegregation plan, if the educational needs, language(s), and grade level(s) of those children are of a similar type to those which the project is intended to address.

(b) (1) In meeting the requirements in paragraph (a) of this section, the applicant shall comply with the requirements in EDGAR (34 CFR 76.651-76.662).

(2) For the purpose of this section, the terms "subgrantee" and "subgrant" as used in those sections of EDGAR mean "grantee" and "grant", respectively.

(c) If an applicant fails to provide for the participation of minority group children enrolled in nonprofit private schools as required in paragraph (a) of this section, the Secretary—

(1) Withholds approval of the application until the applicant demonstrates that it will provide for the participation of those children; or

(2) Reduces the amount of the grant by the amount the Secretary needs to—

(i) Arrange to assess the needs of minority group children in nonprofit private schools whose participation would assist in achieving the purposes of the LEA's qualifying desegregation plan; and

(ii) Carry out an instructional program of bilingual-bicultural education for minority group children whose educational needs, language(s), and grade level(s) are of a similar type to those which the project is intended to address.

(d) (1) In addition to meeting the requirements in paragraphs (a) and (b) of this section, an applicant may, at its option, provide an instructional program of bilingual-bicultural education for minority group children and their classmates enrolled in nondiscriminating nonprofit private schools in the LEA, whose participation would assist in achieving the purposes of the LEA's qualifying desegregation plan, although the educational needs, language(s), and grade level(s) of the minority group children are not of a type similar to those of the public school participants.

(2) An applicant that proposes to provide services under paragraph (d)(1) of this section to children enrolled in nonprofit private schools shall comply with the requirements in 34 CFR 76.657-76.662.

(20 U.S.C. 3231(b)(3)(C)(ii) and (f), 3261(a)(1))

§ 520.22 What requirements pertain to training activities?

An LEA proposing to carry out an instructional program of bilingual-bicultural education shall—

(a) Assess the training needs of the teachers, principals, and other educational personnel who work with minority group children in school(s) participating in the qualifying desegregation plan;

(b) Include in its application plans for training activities that provide, as necessary, training for teachers, principals, and other education personnel who work with minority group children; and

(c) Include in its budget adequate funds for these activities.

(20 U.S.C. 3261(a)(1))

§ 520.23 What requirements pertain to nonprofit private organizations that apply for a bilingual-bicultural curriculum development project?

A nonprofit private organization must include in its application—

(a) Evidence that it has received a request from one or more eligible LEAs to develop bilingual-bicultural curriculum under this program; and

(b) Evidence that it has the capacity to obtain the services of adequately trained and qualified staff.

(20 U.S.C. 3261(a)(2))

Subpart D—How Does the Secretary Make a Grant?

§ 520.30 How does the Secretary evaluate an application proposing a bilingual-bicultural curriculum development project?

The Secretary considers the following criteria worth a total of 150 possible points. The maximum possible score for each criterion is indicated in parentheses.

(a) *Curriculum design.* (40 points)

The Secretary considers the quality of the applicant's plans for designing a curriculum that complements—

(1) The LEA's qualifying desegregation plan; and

(2) Any programs of Federal financial assistance that are related to the purposes of this program.

(b) *Needs identification.* (10 points)

The Secretary considers the extent to which the applicant has identified, by reliable and objective means, the nature and magnitude of the special educational needs of the minority group children.

(c) *Impact.* (40 points total)

The Secretary considers the extent to which the proposed curriculum will—

(1) Meet the special educational needs of minority group children; (15 points);

(2) Increase the skills of minority group children in understanding, speaking, reading, and writing both

English and the native language of the parents or grandparents of the minority group children (10 points);

(3) Enhance the understanding of the minority group children and their classmates about the history and cultural backgrounds of the minority group children (10 points); and

(4) Involve parents of minority group children in the education of their children (5 points).

(d) *Curriculum evaluation.* (15 points)

The Secretary considers the adequacy of the applicant's plans—

(1) To test the curriculum as it is developed to determine whether it meets the needs identified in the application; and

(2) To include teachers, principals, and other educational personnel from schools participating in the qualifying desegregation plan in the evaluation of the curriculum.

(e) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(f) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (e)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

NOTE: The qualifications of project personnel should relate to the population served by the project. For example, when reviewing projects that serve children of a particular ethnic population, the Secretary looks for project personnel who have extensive experience or expertise in the culture and language of that population.

(g) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(h) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 3261(a)(1) and 20 U.S.C. 3474(a))

§ 520.31 How does the Secretary evaluate an application proposing an instructional program of bilingual-bicultural education?

The Secretary considers the following criteria worth a total of 150 possible points. The maximum possible score for each criterion is indicated in parentheses.

(a) *Project design.* (40 points)

The Secretary considers the quality of the applicant's plans to coordinate the implementation of the instructional program of bilingual-bicultural education with—

(1) Activities carried out under the LEA's desegregation plan; and

(2) Any programs of Federal financial assistance that are related to the purpose of the program.

(b) *Rationale for selection of project sites and participants.* (5 points)

The Secretary considers the rationale and the appropriateness of the methods used to select the schools and children to be served by the project.

(c) *Needs assessment.* (10 points)

The Secretary considers the adequacy of the applicant's assessment of the needs of the children to be served by the project, including assessments of—

(1) The special educational needs of the minority group children;

(2) Proficiency of the minority group children in understanding, speaking, reading, and writing both English and the native language(s) of the parents or grandparents of the minority group children to be served by the project; and

(3) Knowledge and understanding of the children of the history and cultural heritage of the minority group children to be served;

(d) *Impact.* (40 points total)

The Secretary considers the extent to which the proposed program of bilingual-bicultural education will—

(1) Meet the special educational needs of the minority group children (15 points);

(2) Increase the skills of minority group children in understanding, speaking, reading, and writing both English and the native language of the parents or grandparents of the minority group children (10 points);

(3) Enhance the understanding of the minority group children and their classmates about the history and cultural backgrounds of the minority group children and increase their tolerance and appreciation for ethnic differences, (10 points); and

(4) Involve parents of minority group children in the education of their children (5 points).

(e) *Plan of operation.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(f) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (unless the building principal is to be so designated);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (f)(2) (i) and (ii) of this section plans to commit to the project;

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic groups, women, handicapped persons, and the elderly; and

(v) The extent to which the building principal is involved in the daily administration of the project.

(3) To determine the qualifications of a person, the Secretary considers evidence of the past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

NOTE: The qualifications of project personnel should relate to the population served by the project. For example, when reviewing projects that serve children of a particular ethnic population, the Secretary looks for project personnel who have extensive experience or expertise in the culture and language of that population.

(g) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(See 34 CFR 75.590—Evaluation by the grantee)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(h) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(i) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 3261(a)(1) and 20 U.S.C. 3474(a))

§ 520.32 What factors does the Secretary consider in awarding grants?

(a) The Secretary considers the rank order of the application as determined by applying the selection criteria in § 520.31 (for applications proposing instructional programs of bilingual-bicultural education).

(b) The Secretary also considers the need for the proposed activities in the LEA(s) to be served by the project.

(1) In determining need under paragraph (b) of this section, the Secretary considers—

(i) The number of minority group children [illegible] would benefit from the program [illegible]lingual-bicultural education;

(ii) Assistance the applicant is receiving under other programs of Federal financial assistance that are related to the purposes of this program; and

(iii) Previous assistance that the applicant has received under this program or under Section 708 of the Emergency School Aid Act and the need for further assistance.

(2) In determining need under paragraph (b)(1) of this section, the Secretary uses—

(i) Information provided in the application;

(ii) Information provided in the SEA review of the application (under 34 CFR 500.20);

(iii) Information on current and past educational and training activities supported under the Bilingual Education Act and the Emergency School Aid Act; and

(iv) Other information available to the Secretary; and

(c) For applications proposing to implement instructional programs of bilingual-bicultural education, the Secretary gives priority to applications that propose to implement bilingual-bicultural curriculum developed under this program, if that curriculum is determined to be appropriate to the needs of the LEA.

(20 U.S.C. 3231(c), 3261)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 520.40 What requirements pertain to all grantees?

A grantee shall—

(a) Work closely with its project committee in carrying out project activities; and

(b) Coordinate project activities with—

(1) The goals and implementation of the LEA's qualifying desegregation plan; and

(2) Any programs of Federal financial assistance that are related to the purposes of the program.

(c) A grantee shall comply with the "supplement not supplant" requirement in Section 721(b)(3)(G) of the Act.

(20 U.S.C. 3231(b)(3)(G) and 3261(a) (2) and (3))

§ 520.41 What additional requirement pertains to grantees carrying out an instructional program of bilingual-bicultural education?

A grantee shall inform parents of children participating in the program of the instructional goals of the program and the progress of their children in the program.

(20 U.S.C. 3223(a)(4)(F))

PART 525—BILINGUAL VOCATIONAL TRAINING PROGRAM

Sec.

525.601 Purpose.
525.602 Eligible programs.
525.603 Eligible applicants.
525.604 Applications for grants or contracts.
525.605 Review of applications.
525.606 Selection criteria.
525.607 Additional application review factors.

AUTHORITY: Secs. 101-195 of Title II of Pub. L. 94-482 as further amended by Pub. L. 95-40 (20 U.S.C. 2301 to 2461), unless otherwise noted.

SOURCE: 42 FR 53852, Oct. 3, 1977, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

§ 525.601 Purpose.

The purpose of the bilingual vocational training program is to prepare persons of limited English-speaking ability to perform adequately in an environment requiring English language skills and to fill the critical need for more and better trained persons in occupational categories vital to both the persons and the economy. Funds available to the Secretary pursuant to section 183 of Part B of Title I of the Vocational Education Act of 1963, as amended by section 202 of Title II of the Education Amendments of 1976, Pub. L. 94-482 (referred to as "the Act") may be used for making grants or contracts for bilingual vocational training programs.

(Sec. 181; 20 U.S.C. 2411; Conf. Rept. No. 94-1701, p. 228)

[45 FR 86301, Dec. 30, 1980]

§ 525.602 Eligible programs.

Sixty-five percent of the funds available under section 183 of the Act may be used by the Secretary to award grants or contracts for the cost of operating programs designed to carry out the purposes set forth in § 525.601 in an amount equal to the total sum expended by the applicant for the purposes set forth in the application. No cost sharing is required. These programs include:

(a) Bilingual vocational training programs for persons who have completed or left elementary or secondary school. Programs for secondary school students are not eligible;

(b) Bilingual vocational training programs for persons who have already entered the labor market and who desire or need training or retraining to achieve year-round employment, adjust to changing employment needs, expand their range of skills, or advance in employment.

Training allowances for participants in bilingual vocational training programs described in paragraphs (a) and (b) of this section are an allowable cost. Allowances are subject to the same conditions and limitations as set forth in the Department of Labor Regulations 29 CFR 95.34. Applicants may waive training allowances in accordance with the waiver procedure in 29 CFR 95.34(j).

(Sec. 185; 20 U.S.C. 2415)

§ 525.603 Eligible applicants.

The following agencies or institutions are eligible for grants or contracts, except item (f) being eligible only for contracts:

(a) Local educational agencies;

(b) State agencies;

(c) Postsecondary educational institutions;

(d) Private nonprofit vocational training institutions; and

(e) Nonprofit organizations especially created to serve a group whose language as normally used is other than English; and

(f) Private for profit agencies and organizations.

(Sec. 184; 20 U.S.C. 2414)

[42 FR 53852, Oct. 3, 1977; 43 FR 3909, Jan. 30, 1978. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 525.604 Applications for grants or contracts.

(a) An applicant shall give the State board an opportunity to comment on its application.

(b) [Reserved]

(c) An applicant shall set forth a bilingual vocational training program of such size, scope, and design as will make a substantial contribution toward carrying out the purposes described in § 525.601.

(d) An applicant shall provide an assurance that the program will include instruction in the English language and in the trainee's dominant language in order to insure that participants in the training will be assisted to pursue occupations in work environments where English is the language normally used.

(Sec. 184; 20 U.S.C. 2414; sec. 189A(b); 20 U.S.C. 2420)

[42 FR 53828, Oct. 3, 1977, as amended at 45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 525.605 Review of applications.

(a) [Reserved]

(b) Prior to making awards in a State, the Secretary will, where feasible, consult with the State board to achieve equitable distribution of assistance among populations of persons of limited English-speaking ability with the most acute need for training within the State.

(Sec. 189A, 189B(a)(3); 20 U.S.C. 2420, 2421)

[42 FR 53828, Oct. 3, 1977, as amended at 45 FR 22530, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 525.606 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new awards. The maxmium score for all of the criteria is 100 points.

(a) *Plan of operation.* (Maximum 33 points).

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (Maximum 25 points).

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (Maximum 10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (Maximum 12 points).

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

CROSS-REFERENCE: 34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (Maximum 3 points).

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need.* (Maximum 10 points).

(1) Describes the need for the proposed bilingual vocational training;

(2) Provides specific evidence of the need;

(3) Indicates specifically how the need will be met; and

(4) Describes, where appropriate, ongoing and planned activities in the community relative to the need.

(g) *Institutional capability and commitment.* (Maximum 7 points). The application provides adequate evidence of—

(1) Institutional experience and commitment to the proposed work;

(2) Documented assurance of support from cooperating agencies, institutions, or community groups where applicable for successful implementation of the project.

(20 U.S.C. 2420)

[46 FR 5383, Jan. 19, 1981]

§ 525.607 Additional application review factors.

In addition to the criteria listed in § 525.606, the Secretary may utilize factors such as the following in making decisions regarding whether to fund applications.

(a) Duplication of effort; (b) duplication of funding; and (c) evidence that an applicant has not performed satisfactorily on previous projects.

(Implements Sec. 181; 20 U.S.C. 2411)

PART 526—BILINGUAL VOCATIONAL INSTRUCTOR TRAINING PROGRAM

Sec.

526.611 Purpose.
526.612 Eligible programs.
526.613 Eligible applicants.
526.614 Applications for grants or contracts.
526.615 Review of applications.
526.616 Selection criteria.
526.617 Additional application review factors.

AUTHORITY: Secs. 101-195 of Title II of Pub. L. 94-482 as further amended by Pub. L. 95-40 (20 U.S.C. 2301 to 2461), unless otherwise noted.

Source: 42 FR 53852, Oct. 3, 1977, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

§ 526.611 Purpose.

The purpose of the bilingual vocational instructor training program is to provide training programs to meet the critical shortage of instructors possessing both the job knowledge and skills and the dual language capabilities required for adequate instruction of persons handicapped by their limited English-speaking ability. Funds available to the Secretary pursuant to section 183 of Part B of Title I of the Vocational Education Act of 1963, as amended by section 202 of Title II of the Education Amendments of 1976, Pub. L. 94-482 (referred to as "the Act") may be used for making grants or contracts for bilingual vocational instructor training programs.

(Sec. 186; 20 U.S.C. 2416)

[45 FR 86301, Dec. 30, 1980]

§ 526.612 Eligible programs.

Twenty-five percent of the funds available under section 183 of the Act may be used by the Secretary to award grants or contracts for the cost of conducting training for instructors of bilingual vocational training programs in an amount equal to the total sum expended by the applicant for the purposes set forth in that application. No cost sharing is required. These programs include:

(a) Pre-service training programs designed to prepare persons to participate in bilingual vocational training or bilingual vocational education as:

(1) Instructors; (2) aides; and (3) ancillary personnel such as guidance personnel and counselors.

(b) In-service and developmental programs designed to enable instructional and ancillary personnel to continue to improve their qualifications while participating in bilingual vocational training programs; fellowships or traineeships for persons engaged in activities described in paragraphs (a) and (b) of this section are an allowable cost. A fellowship is an award to an individual student made by the Department. A traineeship is an award to an institution for student support (stipends or allowances) and for institutional support (either in a predetermined amount or based on actual costs).

(Secs. 186, 187; 20 U.S.C. 2416, 2417)

[42 FR 53852, Oct. 3, 1977. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86299, Dec. 30, 1980]

§ 526.613 Eligible applicants.

The following categories of agencies or institutions are eligible for grants or contracts, except item (c) being eligible only for contracts: (a) State agencies; (b) public and private nonprofit educational institutions; and (c) private-for-profit educational institutions.

(Sec. 186; 20 U.S.C. 2416)

§ 526.614 Applications for grants or contracts.

(a) [Reserved]

(b) An applicant shall set forth in the application a bilingual vocational instructor training program of a type described in § 165.612;

(c) An applicant shall describe in the application the capabilities of the applicant institution in terms of:

(1) A listing of the vocational training or vocational education courses offered by that institution;

(2) Appropriate accreditation by regional or national associations, if any;

(3) Approval by appropriate State agencies of the courses offered; and

(d) An application shall describe clearly (and in detail) in the application the trainees in terms of the:

(1) Minimum qualifications of the persons to be enrolled in the training program;

(2) Selection process of the trainees; and

(3) Amounts of fellowships or traineeships, if any, to be granted to the persons enrolled.

(Sec. 189A; 20 U.S.C. 2420)

[42 FR 53828, Oct. 3, 1977, as amended at 45 FR 22530, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 526.615 Review of applications.

(a) The Secretary may approve an application for assistance under the bilingual vocational instructor training program only if the application:

(1) Meets the requirements set forth in § 526.614;

(2) Is consistent with the criteria set forth in § 526.616;

(3) Is submitted to the Secretary at the time, in the manner and containing the information the Secretary deems necessary, as set forth in the Notice of Closing Date to be published in the FEDERAL REGISTER.

(4) The applicant institution actually has an ongoing vocational training program in the field in which persons are being trained; and

(5) The applicant institution can provide instructors with adequate language capabilities in the language other than English to be used in the bilingual vocational training program for which persons are being trained.

(b) Prior to making awards in a State, the Secretary will, where feasible, consult with the State board to achieve equitable distribution of assistance among populations of persons of limited English-speaking ability with the most acute need for training within the State.

(Secs. 189A, 189B(a)(3); 20 U.S.C. 2420, 2421)

§ 526.616 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new awards. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (Maximum 25 points).

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (Maximum 25 points).

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (Maximum 10 points).

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (Maximum 12 points).

(1) The Secretary reviews each application for information that shows

the quality of the evaluation plan for the project.

CROSS-REFERENCE: 34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (Maximum 3 points).

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need.* (Maximum 10 points). The need section clearly—

(1) Describes the need for the proposed instructor training;

(2) Provides specific evidence of the need;

(3) Indicates specifically how the need will be met; and

(4) Describes, where appropriate, ongoing and planned activities in the community relative to the need.

(g) *Institutional capability and commitment.* (Maximum 7 points). The application provides adequate evidence of—

(1) Appropriate accreditation of the applicant institution by regional or national associations and approval by appropriate State agencies of the courses offered; and

(2) Documented assurance of support from cooperating agencies, institutions, or community groups where applicable for successful implementation of the project.

(h) *Ongoing vocational training.* (Maximum 4 points). The extent to which the applicant actually has an ongoing vocational training or vocational education program in the field for which persons are to be trained. Include a listing of the vocational courses offered by the applicant.

(i) *Language capabilities.* (Maximum 4 points). The extent to which the applicant institution can provide instructors with adequate language capabilities in the language other than English to be used in the bilingual job training program for which the instructors are being trained.

(20 U.S.C. 2420)

[46 FR 5384, Jan. 19, 1981]

§ 526.617 Additional application review factors.

In addition to the criteria listed in § 526.616, the Secretary may utilize factors such as the following in making decisions regarding whether to fund applications:

(a) Duplication of effort;

(b) Duplication of funding; and

(c) Evidence that an applicant has not performed satisfactorily on previous projects.

(Implements Sec. 181; 20 U.S.C. 2411)

PART 527—BILINGUAL VOCATIONAL INSTRUCTIONAL MATERIALS, METHODS, AND TECHNIQUES PROGRAM

Sec.

527.621 Purpose.
527.622 Eligible programs.
527.623 Eligible applicants.
527.624 Applications for grants or contracts.
527.625 [Reserved]
527.626 Selection criteria.
527.627 Additional application review factors.

AUTHORITY: Secs. 101-195 of Title II of Pub. L. 94-482 as further amended by Pub. L. 95-40 (20 U.S.C. 2301 to 2461), unless otherwise noted.

SOURCE: 42 FR 53852, Oct. 3, 1977, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

§ 527.621 Purpose.

The purpose of the bilingual vocational instructional materials, methods, and techniques program is to develop instructional materials and encourage research programs and demonstration projects to meet the critical shortage of such instructional materials suitable for bilingual vocational training programs. Funds available to the Secretary pursuant to section 183 of Part B of Title I of the Vocational Educational Act of 1963, as amended by section 202 of Title II of the Education Amendments of 1976, Pub. L. 94-482 (referred to as "the Act") may be used for making grants or contracts for bilingual vocational instructional materials, methods, and techniques.

[45 FR 86301, Dec. 30, 1980]

§ 527.622 Eligible programs.

Ten percent of the funds available under section 183 of the Act may be used by the Secretary to award grants or contracts for the cost of developing and testing instructional materials, methods, or techniques for bilingual vocational training in an amount equal to the total sum expended by the application for the purposes set forth in that application. No cost sharing is required. These programs include:

(a) Research in bilingual vocational training;

(b) Development of instructional materials;

(c) Training programs designed to familiarize State agencies and training institutions with research findings and successful pilot and demonstration projects in bilingual vocational training;

(d) Experimental, developmental, and pilot programs and projects designed to test the effectiveness of research findings; and

(e) Other demonstration and dissemination projects in bilingual vocational training.

(Sec. 189; 20 U.S.C. 2419)

§ 527.623 Eligible applicants.

The following categories of agencies or institutions are eligible for grants or contracts, except items (e) and (f) being eligible only for contracts:

(a) State agencies; (b) public educational institutions; (c) private educational institutions; (d) nonprofit organizations; (e) private-for-profit organizations; and (f) individuals.

(Sec. 188; 20 U.S.C. 2418)

§ 527.624 Applications for grants or contracts.

(a) [Reserved]

(b) An applicant shall set forth in the application a bilingual vocational instructional materials, methods, and techniques program of a type described in § 527.622.

(Sec. 189A; 20 U.S.C. 2420)

[42 FR 53828, Oct. 3, 1977, as amended at 45 FR 22530, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 527.625 [Reserved]

§ 527.626 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new grants. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (Maximum 35 points).

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (Maximum 10 points).

(1) The Secretary reviews each application for information that shows the quality of key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (Maximum 5 points).

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (Maximum 10 points).

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

CROSS-REFERENCE.—34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (Maximum 3 points).

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need.* (Maximum 20 points). The need section clearly—

(1) Describes the national significance and the need in bilingual vocational training for the proposed project;

(2) Provides specific evidence of the need;

(3) Indicates specifically who or what will be helped; and

(4) Describes the problem rather than the symptoms of the problem.

(g) *Literature review.* (Maximum 5 points). The literature review is sufficiently comprehensive to—

(1) Establish the basis for the problem;

(2) Describe the problem in contrast to the symptoms of the problem;

(3) Provide a strong conceptual framework for the proposed objectives and proposed plan, including the general design and specific procedures of the proposed plan, along with the management, evaluation, dissemination, and training procedures (when appropriate); and

(4) Describe what has been done previously to alleviate the problem and point out the gaps that will be alleviated by this specific proposed work.

(h) *Results, end products, outcomes, and dissemination.* (Maximum 8 points). The application clearly describes—

(1) What will be delivered to the Government; and

(2) The format in which the results, products, or outcomes will be delivered to the Government.

(i) *Applicant's capability and commitment.* (Maximum 4 points). Documented assurance of support from cooperating agencies, local educational agencies or postsecondary institutions, business, industry, and labor, where applicable for successful implementation of the project.

(20 U.S.C. 2420)

[46 FR 5384, Jan. 19, 1981]

§ 527.627 Additional application review factors.

In addition to the criteria listed in § 527.626, the Secretary may utilize factors such as the following in making decisions regarding whether to fund applications:

(a) Duplication of effort;

(b) Duplication of funding; and

(c) Evidence that an applicant has not performed satisfactorily on previous projects.

(Implements Sec. 181; 20 U.S.C. 2411)

PART 537—INDOCHINA REFUGEE CHILDREN ASSISTANCE PROGRAM

Subpart A—General

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537.28 Under what conditions does the Secretary withhold funds?
537.29 Under what circumstances does the Secretary permit waivers of requirements for serving non-public school children?

AUTHORITY: Title II, Pub. L. 94-405, 90 Stat.1229, as amended by Pub. L. 95-561, 92 Stat. 2363, (20 U.S.C. 1211b note) unless otherwise noted.

SOURCE: 45 FR 6047, Jan. 24, 1980, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—General

§ 537.1 A description of the Indochina Refugee Children Assistance Program.

The Indochina Refugee Children Assistance Program provides Federal financial assistance to States for educational services to Indochinese refugee children:

(a) Paroled into the United States on or after January 1, 1977; and

(b) Receiving public educational services under the supervision of an LEA in one of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(Sections 201-203 of the Act)

§ 537.2 What regulations apply to the Indochina Refugee Children Assistance Program?

(A) Regulations that apply to the Indochina Refugee Children Assistance Program are—

(1) 34 CFR 76.55 as in effect October 1, 1979;

(2) 34 CFR Part 74; and

(3) This Part 537.

(4) If any provision in other regulations conflicts with any provision in this part, the provision in this part applies.

(b) These regulations only apply to current funds appropriated in fiscal year 1980 for use primarily during the 1979-1980 school year. If any of these funds are carried over into 1981 fiscal year, these regulations will continue to apply to activities carried out with those funds.

(Title II of the Act; 20 U.S.C. 1221e-3(a)(1); 1232c (a) and (b); 1232d; 31 U.S.C. 200; 42 U.S.C. 2000d; Pub. L. 96-123)

§ 537.3 What are the definitions that apply to this program?

(a) *Definitions specific to these regulations.*

As used in this part:

"Act" means the Indochina Refugee Children Assistance Act of 1976 (Pub. L. 94-405), as amended by Title XIII of the Education Amendments of 1978 (Pub. L. 95-561).

"Basic instructional services" means those instructional services regularly provided to non-refugee children. These services may include those provided by regular personnel and the acquisition of regularly provided books and other instructional materials.

(Sections 103, 203 of the Act)

"Eligible children" means Vietnamese, Cambodian, and Laotian children who are—

(1) Refugees within the meaning given that term in section 3 of the Indochina Migration and Refugee Assistance Act of 1975;

(2) Admitted into the United States on or after January 1, 1977, under the special parole authority of the Attorney General granted by Section 212(d)(5) of the Immigration and Naturalization Act; and

(3) Within the age limits for which the applicable State is required or permitted to provide free public elementary and secondary education in kindergarten through grade 12.

(Sections 201(b)(3), 203, and 205 of the Act)

"Parent" means a natural or adoptive parent, legal guardian, or other person having primary responsibility for an eligible child.

(20 U.S.C. 1231d)

"Supplementary educational services" means instructional services, special materials and supplies used for instruction, and guidance and counseling services—

(1) That are necessary to enable eligible children to achieve a satisfactory level of performance; and

(2) That are in addition to the basic instructional services provided by an LEA to non-eligible children of similar age. Supplementary educational services includes, but is not limited to, English language instruction in such forms as English as a second language, English for speakers of other languages, or bilingual education.

(Section 103(a) of the Act)

(b) *Definitions found elsewhere that apply to this program.*

The following terms, as used in this part, have the meaning given to them in section 201(b) of the Act:

Elementary school
Local educational agency (LEA)
Secondary school
State
State educational agency (SEA)
Elementary or secondary non-public schools

(Section 201(b) of the Act)

[45 FR 6047, Jan. 24, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86300, Dec. 30, 1980]

Subpart B—How Does a State Apply for a Grant?

§ 537.4 How does a State apply for funds?

A State educational agency (SEA) wishing to participate in this program shall submit to the Secretary—

(a) A general application, as required by Section 435 of the General Education Provisions Act (GEPA).

(b) A State application, as required by section 205(a) of the Act and by Part 76 of this title.

(20 U.S.C. 1232d)

[45 FR 6047, Jan. 24, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86300, Dec. 30, 1980]

§ 537.5 When does a State apply for funds?

(a) The Secretary publishes a closing date in the FEDERAL REGISTER for submittal of SEA applications.

(b) An SEA wishing to apply for funds under this program shall submit the documents required by § 537.4 to the Secretary no later than the closing date published in the FEDERAL REGISTER.

(Section 205 of the Act; 20 U.S.C. 1221e-3(a))

§ 537.6 What is included in the State application?

(a) The State application submitted by an SEA shall fulfill all application requirements of—

(1) Section 205 of the Act; and

(2) Section 435 of the GEPA.

(b) *Child Count.* The State application must also contain a statement showing the following:

(1) (i) The total number of eligible children (as defined in § 537.3) in the State, aged 5 to 17, who in school year 1979-80 are receiving or will receive under the supervision of a local educational agency, public educational services assisted under this part or funded from some other source (these are the children who are counted for funding purposes); and

(ii) The number of eligible children aged 5 to 17 who are not or will not receive educational services under this program.

(2) The number of eligible children described in paragraphs (b)(1) (i) and (ii) of this section, from—

(i) Vietnam;

(ii) Laos;

(iii) Cambodia.

(3) The total number of eligible children described in paragraphs (b)(1) (i) and (ii) of this section, who have enrolled in school for the first time in this country during the 1979-1980 school year.

(4) The total number of eligible children described in paragraphs (b)(1) (i) and (ii) of this section, who have enrolled in a school in this country prior to the 1979-1980 school year.

(c) The State application must contain a statement showing for each of the categories listed in paragraph (b) of this section—

(1) The total number of children enrolled in public schools; and

(2) The total number of children enrolled in non-public schools.

(d) The State application shall describe procedures the SEA will use for approving LEA applications and for the allocation of the non-formula set-aside subgrants in § 537.16 among participating LEAs within the State.

(e) The number of children counted under paragraphs (b) and (c) of this section, is determined by the State and reported to the Secretary in accordance with a notice published in the FEDERAL REGISTER.

(f) A State may not include in its count, for purposes of this section, estimates of the number of Indochinese refugee children who are not enrolled in any school on the child count date but are expected to enter this country in the future.

(Section 205 of the Act; 20 U.S.C. 1221e-3(a)(1), 1232d)

§ 537.7 Amending the State application.

A State shall amend the State application if required under Part 76. The Secretary may establish a closing date for amendments to the State application by publishing a notice in the FEDERAL REGISTER.

(20 U.S.C. 1221e-3(a)(1))

§ 537.8 Effective date of the State application.

(a) The effective date of a State's application is October 1, 1979.

(b) This date is the earliest date on which costs may be paid with funds provided under this program.

(Section 201(a) of the Act; 20 U.S.C. 1221e-3(a)(1); 1232c(a)(1))

Subpart C—How is a Grant Made to a State?

§ 537.9 Under what conditions does the Secretary approve a State application?

The Secretary approves each State application that satisfies the requirements of the Act, the regulations of this part, and the applicable regulations of Part 76.

(Section 205(b) of the Act; 20 U.S.C. 1221e-3(a)(1))

§ 537.10 What is the maximum grant for which a State is eligible?

(a) A State is eligible for a maximum annual grant equal to $450 multiplied by the number of eligible children counted in § 537.6.

(b) The aggregate grant which the jurisdictions listed in section 202(c)(1) of the Act may receive is equal to one percent of the total amount received by the remaining States, Territories and the District of Columbia. The maximum grant may not exceed $450 per child.

(c) If funds appropriated are not adequate to provide $450 for each eligible child served, the Secretary ratably reduces the amount for which applicant SEAs are eligible to the extent necessary to keep total grants within the limits of the funds appropriated.

(Sections 202, 204, of the Act)

§ 537.11 Procedures for disapproving a State application.

The Secretary does not finally disapprove an SEA application without first providing the SEA with reasonable notice of the proposed disapproval and an opportunity for a hearing on the record.

(Section 205(b) of the Act)

§ 537.12 What funds may an SEA use for administration?

(a) The funds used by the SEA may not exceed 5 percent of the State allocation or the actual costs for administration—whichever is less.

(b) For purposes of this part, administration costs include those costs necessary for—

(1) Disbursement of funds including receiving and approving LEA applications;

(2) Conducting counts of eligible children required by the Secretary in response to a notice in the FEDERAL REGISTER; and

(3) Monitoring LEAs to ensure that the provisions of the Act and these regulations are met.

(20 U.S.C. 1221e-3(a)(1))

(c) A complete budget justification and prior approval of the Secretary is required before an SEA may use more than $150,000 for administration costs.

(20 U.S.C. 1221e-3(a)(1); Section 206(b) of the Act)

Subpart D—How Does an LEA Apply to the State for a Subgrant?

§ 537.13 Who is eligible for educational services under this program?

Eligible children, who are enrolled in a public or non-public elementary or secondary school may receive educational services supported with Federal funds provided under this program if those services are provided under the supervision of a local educational agency.

(Sections 103, 202(b)(1)(A), 203 of the Act)

§ 537.14 Who is eligible to receive a subgrant under this program?

Any LEA or consortium of two or more LEAs with eligible children within a State is eligible to receive a subgrant under this program.

(Sections 205(a) (1), (3), (6) of the Act)

§ 537.15 What are the application requirements for subgrantees?

(a) An LEA or consortium of LEAs that desires to receive a subgrant under this program shall submit an application to the SEA in the form and manner prescribed by the SEA as contained in the State application.

(b) Each LEA application must comply with the relevant application requirements of GEPA.

(c) Each LEA application must contain assurances that it will comply with the applicable provisions of GEPA.

(Section 205(a)(4) of the Act; 20 U.S.C. 1231d, 1232e)

Subpart E—How is a Subgrant Made to an LEA?

§ 537.16 Amount of a subgrant.

(a) *General.*

(1) The SEA shall allocate funds among LEAs in accordance with the provisions of paragraphs (b) and (c) of this section, which requires payments to be distributed in proportion to the costs of providing additional services for eligible children.

(2) In no event shall payments to LEAs exceed the actual expenditures described in § 537.18.

(b) *Formula Subgrants.* The SEA shall allocate at least 80 percent of its funds remaining after administration costs to LEAs according to the procedure in paragraphs (d) and (e) of this section. The procedure involves two categories of eligible children described in § 537.6(b)—

(1) *Category I.* Those who have enrolled in a school in this country prior to the 1979-1980 school year; or

(2) *Category II.* Those who have enrolled in a school in this country for the first time during the 1979-1980 school year.

(20 U.S.C. 1221e-3(a)(1))

(c) The SEA may reserve up to 20 percent of its funds remaining after administration costs for subgrants to LEAs to meet unforeseen or unusual costs such as these occasioned by new concentrations of eligible children who enroll in an LEA after the formula subgrants in paragraph (b) of this section are distributed.

(d) *Procedure.* (1) The SEA determines the number of children in the State in each category ((c) (1) and (2)).

(2) The SEA—

(i) Multiplies the number of children in Category I by one (1); and

(ii) Multiplies the number of children in Category II by two (2).

(3) The SEA adds the products of paragraphs (d)(2) (i) and (ii) of this section to obtain the total weighted count.

(4) The SEA divides the total funds available for LEA formula subgrants (at least 80 percent of the total funds less administrative costs) by the weighted child count in paragraph (d)(3) of this section to determine the weighted child allocation.

(e) *Example.* (1) An LEA reports 10 Category I children and 10 Category II children. By applying the procedure in paragraph (d) of this section the total weighted child count equals 30:

(i) Ten multiplied by 1 in Category I equals 10; and

(ii) Ten multiplied by 2 in Category II equals 20.

(2) The LEA payment equals the product of the weighted total in paragraph (e)(1) of this section (which is 30) multiplied by the average weighted child allocation in paragraph (d)(4). If weighted child allocation equals $200 and the weighted child count total in paragraph (e)(1) of this section, is 30, the total LEA payment in this example would be $6,000.

(20 U.S.C. 1221e-3(a)(1))

(f) A State making a subgrant to an LEA in accordance with the provisions of paragraphs (b) and (c) of this section must adjust the amount of the subgrant if, upon the receipt of subsequent information, it is determined that the amount of the original subgrant does not conform to the limitations imposed by this section.

(Section 203, 205(a)(3) of the Act; 20 U.S.C. 1221e-3(a)(1))

§ 537.17 [Reserved]

Subpart F—What Conditions Must Be Met by the State and Its Subgrantees?

§ 537.18 How are actual expenditures determined?

(a) The Secretary considers actual expenditures allowed by the Act to—

(1) Be limited to the cost of basic instructional services and supplementary educational services that an LEA or SEA provides either directly or by contract; and

(2) Be only those costs that would not have been incurred except for the presence of eligible children.

(b) Generally, these expenditures include—

(1) Personnel costs necessary to provide supplementary educational services to eligible children;

(2) Personnel costs necessary to keep basic instructional services at normal or average levels established by either existing practice or formal policy;

(3) Instructional materials, supplies, and guidance and counseling services necessary to permit participation by eligible children in regular school programs; and

(4) Inservice training of personnel who provide educational services for Indochinese refugee children.

(Sections 103, 203 of the Act)

§ 537.19 [Reserved]

Subpart G—What Are the Administrative Responsibilities of the State and Its Subgrantees?

§ 537.20 Procedures for disapproving an LEA application.

The SEA shall not finally disapprove an LEA application for funds under this program, either in whole or in part, without first providing the LEA with a reasonable notice of its decision and an opportunity for a hearing on the record.

(Section 205(a)(4) of the Act)

§ 537.21 What are the State's responsibilities in administering the program?

Subject to the provision of § 537.12, an SEA receiving funds under this program is responsible for—

(a) Complying with its assurances to the Secretary;

(b) Reviewing and approving of its LEA applications; and

(c) Monitoring the performance of LEAs to which it has awarded subgrants under this program to ensure that the provisions of the Act and these regulations are met.

(Sections 205(a), 205(b) of the Act; 20 U.S.C. 1221e-3(a)(1))

§ 537.22 Who controls and supervises funds, services, and materials provided under this program?

Grantees and subgrantees shall be responsible for maintaining public supervision and control over funds provided under this program and over services or materials acquired with those funds.

(Section 205(a) (1), (6) of the Act; 20 U.S.C. 1221e-3(a))

§ 537.23 When are costs allowable under this program?

SEAs and LEAs shall use funds provided under this program for costs incurred only on or after October 1, 1979.

(Sections 103, 201(a) of the Act)

§ 537.24 When may an SEA make a subgrant?

An SEA shall make a subgrant to an LEA—

(a) On or after the date on which the SEA application to the Secretary is effective;

(b) If all the applicable requirements of the Act, the General Educational Provisions Act, and applicable regulations are met; and (Sections 203, 205(a) of the Act; 20 U.S.C. 1221e-3(a)(1), 1231d);

(c) No sooner than the first day that the SEA application has been approved by the Secretary.

(Sections 201(a), 203, 205 of the Act; 20 U.S.C. 1221e-3(a)(1))

§ 537.25 [Reserved]

§ 537.26 What restrictions are there on the use of funds?

(a) FY 1980 funds shall be used to principally deal with eligible children entering school in this country for the first time during the 1979-1980 school year. Each grantee and subgrantee shall use funds available under its subgrant first to ensure that these children receive necessary services. If funds are available after serving those children, subgrantees may use remaining funds to serve other eligible children.

(b) Grantees and subgrantees shall not use funds provided under this program for—

(1) Programs, services, and expenditures that are not authorized under section 103 and 205(a)(6) of the Act;

(2) Overhead costs, construction costs, acquisition or rental of space, or transportation costs; and

(3) Salaries for teachers or other employees of non-public schools.

(c) The public agency may place materials or equipment acquired with program funds on the premises of a private school as needed for the period of the project.

(d) The public agency shall ensure that the materials or equipment placed on the premises of a private school—

(1) Are used only for the purposes of this program; and

(2) Can be removed from the private school without remodeling its facilities.

(e) The public agency shall remove the materials or equipment from the premises of a private school if—

(1) The materials or equipment are no longer needed for the purposes of the project; or

(2) Removal is necessary to avoid use of the materials or equipment for other than the purposes of this program.

(Sections 103, 205(a)(b) of the Act; 602 (1971), Pub. L. 96-123)

§ 537.27 What constitutes parental involvement in the program?

(a) Each SEA shall take steps to ensure that LEAs provide parents of eligible children opportunities to become effectively involved in the planning, implementation, and evaluation of LEA services provided or assisted under this program.

(b) Each participating LEA shall establish policies and procedures to ensure adequate dissemination of program plans and evaluations to parents of eligible children and to the general public.

(20 U.S.C. 1231d)

Subpart H—What Are the Compliance Procedures Used by the Secretary?

§ 537.28 Under what conditions does the Secretary withhold funds?

The Secretary may withhold payments under this part to an SEA if the Secretary, after reasonable notice and the opportunity for a hearing, finds that there has been a failure to meet the requirements of the Act.

(Section 207 of the Act)

§ 537.29 Under what circumstances does the Secretary permit waivers of requirements for serving non-public school children?

(a) (1) If a State is prohibited by law from providing public educational services to eligible children enrolled in non-public elementary or secondary schools, the Secretary—

(i) Waives this requirement; and

(ii) Arranges for services to affected eligible children by contracting with organizations or individuals within the State qualified to provide educational services in accordance with the Act and this part

(2) For the purpose of determining if the conditions described in paragraph (a)(1) of this section exist in the State, the Secretary requires the SEA to furnish an opinion of the Attorney General of the State.

(b) If the Secretary arranges for services to eligible children attending non-public schools, the Secretary reduces the grant to the SEA, including administrative funds, by the amount of funds for which the SEA would have been eligible on behalf of those children.

(c) Even if an SEA is prohibited by law from providing public educational services for children enrolled in non-public elementary and secondary schools, the SEA shall identify and separately enumerate these children in the count required under § 537.6.

(Section 206(c) of the Act; 20 U.S.C. 1221e-3(a)(1))

PART 538—TRANSITION PROGRAM FOR REFUGEE CHILDREN

Subpart A—General

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538.2 Who is eligible to apply for financial assistance?
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538.24 What documents must an applicant submit to an SEA to receive a subgrant?
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Subpart D—How Are Grants and Subgrants Made to Applicants Under the State-Administered Program?

538.30 How does the Secretary review an application submitted by an SEA?
538.31 What formula will be used to distribute funds to SEAs with approved applications?
538.32 How does the Secretary provide for a substantial and disproportionate increase in the enrollment of eligible children that may occur after a grant has been made?
538.33 How are the amounts available for eligible children in each LEA determined?
538.34 [Reserved]
538.35 What criteria does the Secretary use to review an application under the Development and Dissemination Projects Program?

Subpart E—How Are Funds Under the State-Administered Program To Be Spent?

538.40 What are the restrictions on costs under the State-administered program?

AUTHORITY: Immigration and Nationality Act, as amended by the Refugee Act of 1980, Pub. L. 96-212, 8 U.S.C. 1522(d), unless otherwise noted.

SOURCE: 46 FR 3380, Jan. 14, 1981, unless otherwise noted.

Subpart A—General

§ 538.1 What is the transition program for refugee children?

(a) This program provides educational services to meet the special educational needs of eligible children who are enrolled in public and nonprofit private elementary and secondary schools.

(b) This program funds—

(1) Formula grants to States (under the State-Administered Program) based on the number of eligible children in the States; and

(2) Discretionary projects (under the Development and Dissemination Projects Program) designed to produce and demonstrate exemplary approaches, materials, and strategies to meet the special educational needs of eligible children.

(Sec. 412(d)(1) of the Immigration and Nationality Act, as amended)

§ 538.2 Who is eligible to apply for financial assistance?

(a) *State Administered Program.* (1)(i) A State educational agency (SEA) is eligible to apply for a grant to assist local educational agencies (LEAs) in its State in providing special educational services to eligible children, if the State has an approved plan for the administration of refugee resettlement programs in its State on file with the Director of the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services (HHS).

(ii) Requirements pertaining to submission and approval of the State plan are contained in 45 CFR Part 400 (Refugee Resettlement Program; Plan and Reporting Requirements for States).

(2) An LEA or a consortium of LEAs may apply to the SEA for a subgrant to provide services to eligible children enrolled in public and nonprofit private schools within its jurisdiction.

(3) If an LEA does not apply for a subgrant to serve eligible children in schools within its jurisdiction, an SEA—

(i) Arranges through subgrants, contracts, or cooperative agreements with public and nonprofit agencies, organizations, and institutions (including institutions of higher education (IHEs)) for the provision of services to those children; or

(ii) Provides services directly to those children.

(b) *Development and Dissemination Projects Program.* The following may apply for a Development and Dissemination project:

(1) An SEA;

(2) An LEA;

(3) An IHE; and

(4) Any other public or nonprofit public agency, organization, or institution.

(Sec. 412(a)(6); 412 (d)(1) of the Immigration and Nationality Act, as amended)

§ 538.3 What regulations apply to this program?

The following regulations apply to this program:

(a) *General.* (1) The regulations in this part 538.

(2) The Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 74, 77, and 78.

(b) *State-Administered Program.* (1) The regulations in 34 CFR Part 76, except—

(i) Section 76.101(a)-(d);

(ii) Section 76.102;

(iii) Section 76.103; and

(iv) Section 76.105.

(2) The regulations in 45 CFR Part 400 (Refugee Resettlement Program; Plan and Reporting Requirements for States).

(c) *Development and Dissemination Projects Program.* The regulations in 34 CFR Part 75.

(d) If any sections or provisions of 45 CFR Part 400 or 34 CFR Parts 74-78 do not apply to this program, the inapplicability of those sections or provisions is explicitly stated in these regulations.

(20 U.S.C. 3474(a))

§ 538.4 What definitions apply to this program?

(a) The following definitions are specific to these regulations:

"Act" means the Refugee Act of 1980 (Pub. L. 96-212) as amended.

"Application" includes the terms "State plan" and "general application" as used in EDGAR 34 CFR Parts 74-78.

"Bilingual education" means instruction given in, and study of, both English and, to the extent necessary to allow the children to achieve competence in the English language, the native language of the eligible children.

"Eligible children" means children who are—

(1)(i) Admitted into the United States as refugees under the authority of the Immigration and Nationality Act, Secs. 203(a)(7) (repealed), 207, or granted asylum in the United States under the authority of Sec. 208 (8 U.S.C. 1153(a)(7)(repealed), 1157, 1158); or

(ii) Paroled into the United States as refugees under the authority of the Immigration and Nationality Act, Sec. 212(d)(5)(8 U.S.C. 1182(d)(5)); or

(iii) Allowed to remain in the United States as refugees because their deportation has been withheld under the authority of the Immigration and Nationality Act, Sec. 243(h)(8 U.S.C. 1253(h)); or

(iv) Granted asylum in the United States as refugees under the authority of 8 CFR Part 108; or

(v) Admitted into the United States as refugees under the authority of the Refugee Act of 1980, Pub. L. 96-212; and

(2) Who are within the age limits for which the applicable State is required or permitted under State law to provide free public elementary and secondary school education for students in kindergarten through grade 12.

"Indochinese children" means aliens who have fled from Cambodia, Vietnam, or Laos, and who—

(1) Have been admitted into the United States as refugees under Section 207 of the Immigration and Nationality Act;

(2) Have been paroled into the United States by the Attorney General under Section 212(d)(5) of the Immigration and Nationality Act; or

(3) Are applicants for asylum, or have been granted asylum in the United States.

(b) The following definitions in EDGAR (34 CFR Part 77) apply to these regulations:

Applicant
Application
Award
Local educational agency (LEA)
Nonprofit
Private
Project
Secretary
State
State educational agency (SEA)

(c) The following definitions in the Elementary and Secondary Education Act of 1965, as amended, apply to these regulations.

Construction
Elementary school
Secondary school

Immigration and Nationality Act, as amended, 20 U.S.C. 2943, and 20 U.S.C. 3474(a))

Subpart B—What Activities May the Transition Program Support?

§ 538.10 What activities are eligible for support under the State-administered program?

The following services may be provided:

(a) Supplemental educational services—with emphasis on instruction to improve English language skills of eligible children—to enable those children to achieve and maintain a satisfactory level of academic performance. These services include—

(1) Testing to determine the educational needs of eligible children;

(2) Special English language instruction;

(3) Bilingual education;

(4) Remedial programs of instruction; and

(5) Special materials and supplies.

(b)(1) Up to 15 percent of the award may be used to provide support services for the eligible children, including but not limited to—

(i) Inservice training for educational personnel to work with eligible children to enable them more effectively to provide services to those children;

(ii) Training for parents of eligible children to enable them to participate more effectively in the education of their children, and

(iii) School counseling and guidance services for eligible children, including referrals to appropriate social services and health agencies.

(2)(i) In a given year, the Secretary may increase or decrease the 15 percent limit in paragraph (b)(1) of this section if the Secretary determines that the need for these services is proportionately greater or less than the need to provide special educational services.

(ii) To make this determination, the Secretary considers evaluations of ongoing projects under this program and recommendations from persons experienced in educating refugee children.

(iii) The Secretary announces any change in the 15 percent limit through publication of a notice in the FEDERAL REGISTER.

(3) The restrictions in paragraph (b)(1) of this section do not apply where a subgrant, contract, or cooperative arrangement is made, or direct services are provided, on behalf of 40 or fewer eligible children.

(c)(1) An SEA may use up to one percent of the total funds it receives under the State-Administered Program—

(i) To ensure proper and efficient administration of funds under this program; and

(ii) To provide technical assistance to subgrantees and others who are providing services under this program to eligible children.

(2) The total amount of funds used by an SEA for the costs in paragraph (c)(1) of this section may not exceed $200,000.

(Sec. 412(a)(1)(B); 412(a)(6)(B); 412(d)(1) of the Immigration and Nationality Act, as amended)

§ 538.11 What activities are eligible for support under the development and dissemination projects program?

(a) The following activities are eligible for support—

(1) Development of innovative methods, strategies, curricula, instructional materials, instructional programs, personnel development, or other techniques to meet the special educational needs of eligible children, in general, or of eligible children from particular areas of the world;

(2) Examination of the extent to which various projects effectively meet the special educational needs of eligible children; or

(3) Dissemination through national or regional centers, curriculum materials or exemplary practices that meet the special educational needs of eligible children.

(b) The Secretary may, through a notice published in the FEDERAL REGISTER, select specific activities for funding from among those listed in paragraph (a) of this section to respond to the changing national needs for educating eligible children in general or for educating eligible children from particular areas of the world.

(Sec. 412(d)(1) of the Immigration and Nationality Act, as amended, and 20 U.S.C. 3474(a))

Subpart C—How Does One Apply for a Grant or a Subgrant Under the State-Administered Program and the Development and Dissemination Projects Program?

§ 538.20 What documents does the State submit to receive a grant?

To receive a grant, an SEA shall submit to the Secretary an application containing the following:

(a) A count of the number of eligible children in the State, as required in § 537.21.

(b) A program plan that includes—

(1) A description of the SEA's method of counting children eligible for assistance under this program;

(2) A brief description of the services to be provided for those children; and

(3) A brief description of the SEA's plan for administering, monitoring, and evaluating the program.

(c) The following assurances:

(1) An assurance that the SEA will make subgrant awards to LEAs or consortia of LEAs in the State within 60 days of the receipt of the grant award.

(2) An assurance that the SEA will not disapprove in whole or in part an application submitted by an LEA for a subgrant without first affording the LEA a hearing according to the provisions in EDGAR (34 CFR 76.401(d)).

(3) The assurances required in EDGAR (34 CFR 76.101(e)).

(Sec. 412(a)(4) of the Immigration and Nationality Act, as amended, and 20 U.S.C. 347(a))

§ 538.21 How is the number of eligible children determined?

(a) On a date specified by the Secretary through a notice published in the FEDERAL REGISTER, an SEA shall count the number of eligible children enrolled in public and nonprofit private schools in each LEA, who have been admitted into the United States—

(1) Less than one year;

(2) One to two years;

(3) Two to three years; or

(4) Three to four years.

(b)(1) For each category in paragraph (a) of this section, the SEA shall count the number of children enrolled at the elementary school level and the number enrolled at the secondary school level.

(2) For the purpose of this count—

(i) Children who are "enrolled at the elementary school level" means children in grades K-6; and

(ii) Children who are "enrolled at the secondary school level" means children in grades 7-12.

(c) The SEA identifies for each category in paragraphs (a) and (b) of this section the number of Indochinese children and eligible children with another national origin.

(Sec. 412(d)(1) of the Immigration and Nationality Act, as amended, and 20 U.S.C. 3474(a))

§ 538.22 To what extent must a State provide educational services to eligible children enrolled in nonprofit private schools?

(a)(1) The SEA shall provide opportunities for eligible children enrolled in nonprofit private schools to receive educational services under this program.

(2) The requirements which must be met by an SEA with respect to eligible children enrolled in nonprofit private schools are contained in EDGAR (34 CFR 76.651-76.662).

(b) If an LEA is unwilling or unable to provide educational services to eligible children enrolled in nonprofit private elementary and secondary schools, an SEA—

(1) Arranges through a subgrant, contract, or cooperative agreement with a public or nonprofit private agency, organization, or institution for the provision of services to those children; or

(2) Provides services directly to those children.

(c) If a State is prohibited by law from providing educational services to children enrolled in nonporofit private elementary and secondary schools, or if the Secretary determines that an SEA is unwilling or has substantially failed to provide educational services on an equitable basis to eligible children enrolled in nonprofit private schools, the Secretary may—

(1) Proportionally reduce the funds granted to the State; and

(2) Arrange for other means of providing services to those children.

(20 U.S.C. 3474(a))

§ 538.23 When does a State submit its application for a grant?

To be eligible for funds, an SEA must transmit its application in accordance with the application notice published in the FEDERAL REGISTER that establishes a deadline for the transmittal of State applications.

(20 U.S.C. 3474(a))

§ 538.24 What documents must an applicant submit to an SEA to receive a subgrant?

To receive a subgrant, an applicant shall submit to the SEA an application containing the following information:

(a) A count of the number of eligible children in its jurisdiction, as required in § 538.21.

(b) A brief description of the educational services to be provided for the eligible children.

(c) The assurances required in EDGAR (34 CFR 76.301(c)).

(Sec. 412(a)(4) of the Immigration and Nationality Act, as amended and 20 U.S.C. 3474(a))

§ 538.25 When does an applicant submit its application?

An SEA establishes a deadline for receipt of applications for subgrants under this program.

(20 U.S.C. 3474(a))

Subpart D—How Are Grants and Subgrants Made to Applicants Under the State-Administered Program?

§ 538.30 How does the Secretary review an application submitted by an SEA?

The Secretary reviews and approves an application submitted by an SEA if the application complies with the requirements in this part.

(20 U.S.C. 3474(a))

§ 538.31 What formula will be used to distribute funds to SEAs with approved applications?

(a)(1) The most weight will be given to eligible children who have been admitted into the United States for less than one year on the date the child count was made.

(2) Eligible children in paragraph (a)(1) of this section enrolled in elementary and secondary grades will be weighted equally.

(b)(1) Less weight will be given for eligible children who have been admitted into the United States for more than one year on the date the child count was made.

(2) Eligible children in paragraph (b)(1) of this section enrolled in secondary schools will be given more weight than eligible children enrolled in elementary schools.

(c)(1) The Secretary uses the weighting factors in paragraph (d) of this section.

(2) The Secretary may increase or decrease any weighting factor by one or two points on an annual basis to respond to changing needs of eligible children.

(3) The Secretary announces the weighting factors each year through publication of a notice in the FEDERAL REGISTER.

(d) Weighting factors for the fund distribution formula are presented in the following table:

Recency of arrival in the United States (in years)	Weighting factors by school level	
	Elementary	Secondary
Less than 1	10	10
1 to 2	7	9
2 to 3	4	7
3 to 4	1	3
More than 4	0	0

(e) To determine the amount of a grant—

(1) The applicant's child count for each recency of arrival category is multiplied by the weighting factor for the category;

(2) The products for each category are added; and

(3) The sum of the products are multipiled by the weighted per pupil allocation.

Example: The following table presents a computation for a hypothetical LEA based on the weighting factors in paragraph (d) of this section:

Recency of arrival in the United States (in years)	a	b	Weighted count (product of col. a times b)
	Number of eligible children	Sample weighting factor	
Enrolled in Elementary Grades			
0 to 1	10	10	100
1 to 2	10	7	70
2 to 3	5	4	20
3 to 4	0	1	0
More than 4	0	0	0
Enrolled in Secondary Grades			
0 to 1	10	10	100
1 to 2	10	9	90
2 to 3	5	7	35
3 to 4	0	3	0
More than 4	0	0	0
Total	50		415

(4) In the example above, if the weighted per pupil allocation is $50, the grant award would be $20,750. As an example of how much would be paid on behalf of an individual student, if the weighted per pupil allocation is $50, the payment for a student who has been in this country less than a year would be $500; for a secondary grade student who has been in this country between 3 and 4 years, the payment would be $150.

(Sec. 412(d) of the Immigration and Nationality Act, as amended, and 20 U.S.C. 347(a))

§ 538.32 How does the Secretary provide for a substantial and disproportionate increase in the enrollment of eligible children that many occur after a grant has been made?

(a)(1) If the Secretary determines that there has been a substantial and disproportionate increase in the enrollment of eligible children, the Secretary may provide SEAs an opportunity to submit evidence of the increase of the number of eligible children enrolled in schools in the State.

(2) Through a notice published in the Federal Register, the Secretary invites SEAs with increased enrollments of eligible children to submit a recount of the number of eligible children enrolled in schools in the State, according to the provisions in § 538.21.

(b) Where funds are available, the Secretary may provide additional assistance to SEA based on the increase in the number of eligible children in the State, provided that the SEA submits a plan outlining how the additional funds would be spent to provide services for those children.

(c) In distributing funds under paragraph (b) of this section, the Secretary uses the weighting factors in § 538.31.

(d) The Secretary does not decrease the amount of an award to SEA where there is a decrease in the enrollment of eligible children.

(Secs. 412(a)(1)(B); 412(a)(6)(B); 412(d)(1) of the Immigration and Nationality Act, as amended, and 20 U.S.C. 3474(a))

§ 538.33 How are the amounts available for eligible children in each LEA determined?

In determining the amounts available for eligible children in each LEA, the SEA—

(a) Subtracts from the SEA's award the costs budgeted for the administration of the SEA grant award and for technical assistance (These costs may not exceed one percent of the SEA award); and

(1) Applies the formula in § 538.31 to determine the amounts of funds available for eligible children in each LEA.

(Sec. 412(d)(1) of the Immigration and Nationality Act, as amended, and 20 U.S.C. 3474(a))

§ 538.34 [Reserved]

§ 538.35 What criteria does the Secretary use to review an application under the Development and Dissemination Projects Program?

The Secretary uses the following selection criteria worth a total of 100 points. The relative importance of each criterion is indicated next to the heading of that criterion.

(a) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and elderly.

(b) *Quality of key personnel.* (7 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

NOTE: The qualification of project personnel should relate to the population served by the project. For example, when reviewing projects that serve Indochinese refugee children, the Secretary looks for project personnel who have extensive experience or expertise in the culture and language of Indochinese populations.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that show the quality of the evaluation plan for the project. (See 34 CFR 76.590—Evaluation by the grantee.)

(2) The Secretary looks for information that show methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (3 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the appilicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Problems addressed.* (20 points)

(1) The Secretary looks for information that shows the extent to which educational problems of national significance are addressed by the project.

(2) The Secretary looks for information that shows the extent to which the project addresses needs that cannot be, or are not being, effectively addressed by State or local efforts.

(g) *Innovativeness.* (20 points)

The Secretary looks for information that shows the extent to which the project involves techniques that are new nationally but that build on current knowledge and research.

(h) *Scope.* (10 points)

The Secretary looks for information that shows the extent to which the applicant proposes a project that—

(1) Is national or regional in scope; and

(2) Provides services, or is likely to improve educational programs, for eligible children throughout the area served.

(i) *Coordination.* (10 points)

The Secretary looks for information that shows the extent to which the project coordinates activities with existing resource and dissemination centers.

(20 U.S.C. 3474(a))

Subpart E—How Are Funds Under the State-Administered Program To Be Spent?

§ 538.40 What are the restrictions on costs under the State-administered program?

(a)(1) Funds may not be used under this program for—

(i) Construction, repair, remodeling, or alteration of facilities or sites;

(ii) Payments of stipends to participants in inservice training or other workshops, including costs of participant travel, meals, or lodging associated with this training; or

(iii) Payments for the provision of health or social services.

(2) The restrictions in paragraph (a) of this section do not apply where a subgrant, contract, or cooperative arrangement is made, or direct services are provided, on behalf of 40 or fewer eligible children.

(b) Allowable costs are subject to the applicable cost principles in 34 CFR Part 74.

(Sec. 412(d)(1) of the Immigration and Nationality Act, as amended, and 20 U.S.C. 3474(a))

PART 539—EDUCATIONAL SERVICES FOR CUBAN AND HAITIAN ENTRANT CHILDREN

Subpart A—General

Sec.

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Subpart E—How Are Funds Under the State-Administered Program To Be Spent?

539.40 What are the restrictions on costs under the State-Administered Program?

Authority: Secretary's Discretionary Authority, Section 303 of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978, Pub. L. 95-561, 20 U.S.C. 2943.

Source: 46 FR 3388, Jan. 14, 1981, unless otherwise noted.

Effective Date Note: At 47 FR 7660, Feb. 22, 1982, Part 539 was removed effective Oct. 1, 1982.

Subpart A—General

§ 539.1 What is the Educational Services for Cuban and Haitian Entrant Children Program?

(a) This program provides educational services to meet the special educational needs of eligible children who are enrolled in public and nonprofit private elementary and secondary schools.

(b) This program funds—

(1) Formula grants to States (under the State-Administered Program) based on the number of eligible children in the States; and

(2) Discretionary projects (under the Development and Dissemination Projects Program) designed to produce and demonstrate exemplary approaches, materials, and strategies to meet the special educational needs of eligible children.

(20 U.S.C. 2943)

§ 539.2 Who is eligible to apply for financial assistance?

(a) *State Administered Program.* (1) A State educational agency (SEA) is eligible to apply for a grant to assist local educational agencies (LEAs) in its State in providing special educational services to eligible children.

(2) An LEA or a consortium of LEAs may apply to the SEA for a subgrant to provide services to eligible children enrolled in public and nonprofit private schools within its jurisdiction.

(3) If an LEA does not apply for a subgrant to serve eligible children in schools within its jurisdiction, an SEA—

(i) Arranges through subgrants, contracts, or cooperative agreements with public and nonprofit agencies, organizations, and institutions (including institutions of higher education (IHEs)) for the provision of services to those children; or

(ii) Provides services directly to those children.

(b) *Development and Dissemination Projects Program.* The following may apply for a Development and Dissemination project:

(1) An SEA;

(2) An LEA;

(3) An IHE; and

(4) Any other public or nonprofit public agency, organization, or institution.

(20 U.S.C. 2943)

§ 539.3 What regulations apply to this program?

The following regulations apply to this program:

(a) *General.* (1) The regulations in this part 539.

(2) The Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 74, 77, and 78.

(b) *State-Administered Program.* The regulations in 34 CFR Part 76, except—

(1) Section 76.101(a)-(d);

(2) Section 76.102;

(3) Section 76.103; and

(4) Section 76.105.

(c) *Development and Dissemination Projects Program.* The regulations in 34 CFR Part 75.

(d) If any sections or provisions of 34 CFR Parts 74-78 do not apply to this program, the inapplicability of those sections or provisions is explicitly stated in these regulations.

(20 U.S.C. 3474(a))

§ 539.4 What definitions apply to this program?

(a) The following definitions are specific to these regulations:

"Application" includes the terms "State plan" and "general application" as used in the EDGAR 34 CFR Parts 74-78.

"Bilingual education" means instruction given in, and study of, both English and, to the extent necessary to allow the children to achieve competence in the English language, the native language of the eligible children.

"Eligible children" means aliens who—

(1) Are Cuban-Haitians entrants (status pending) who entered the United States on or after November 1, 1979; and

(2) Who are within the age limits for which the applicable State is required or permitted under State law to provide free public elementary and secondary school education for students in kindergarten through grade 12.

(b) The following definitions in EDGAR (34 CFR Part 77 apply to these regulations:

Applicant
Application
Award
Local educational agency (LEA)
Nonprofit
Private
Project
Secretary
State
State educational agency (SEA)

(c) The following definitions in the Elementary and Secondary Education Act of 1965, as amended, apply to these regulations.

Construction
Elementary school
Secondary school

(20 U.S.C. 2854, and 20 U.S.C. 3474(a))

Subpart B—What Activities May Be Supported Under the Educational Services for Cuban and Haitian Entrant Children Program?

§ 539.10 What activities are eligible for support under the State-Administered Program?

The following services may be provided:

(a) Supplemental educational services—with emphasis on instruction to improve English language skills of eligible children—to enable those children to achieve and maintain a satisfactory level of academic performance. These services include—

(1) Testing to determine the educational needs of eligible children;

(2) Special English language instruction;

(3) Bilingual education;

(4) Remedial programs of instruction; and

(5) Special materials and supplies.

(b)(1) Up to 15 percent of the award may be used to provide support services for the eligible children, including but not limited to—

(i) Inservice training for educational personnel to work with eligible children to enable them more effectively to provide services to those children;

(ii) Training for parents of eligible children to enable them to participate more effectively in the education of their children, and

(iii) School counseling and guidance services for eligible children, including referrals to appropriate social services and health agencies.

(2)(i) In a given year, the Secretary may increase or decrease the 15 percent limit in paragraph (b)(1) of this section, if the Secretary determines that the need for these services is proportionately greater or less than the need to provide special educational services.

(ii) To make this determination, the Secretary considers evaluations of ongoing projects under this program and recommendations from persons experienced in educating refugee children.

(iii) The Secretary announces any change in the 15 percent limit through publication of a notice in the FEDERAL REGISTER.

(3) The restrictions in paragraph (b)(1) of this section do not apply where a subgrant, contract, or cooperative arrangement is made, or direct services are provided, on behalf of 40 or fewer eligible children.

(c)(1) An SEA may use up to one percent of the total funds it receives under the State-Administered Program—

(i) To ensure proper and efficient administration of funds under this program; and

(ii) To provide technical assistance to subgrantees and others who are providing services under this program to eligible children.

(2) The total amount of funds used by an SEA for the costs in paragraph (c)(1) of this section may not exceed $200,000.

(20 U.S.C. 2943)

§ 539.11 What activities are eligible for support under the Development and Dissemination Projects Program?

(a) The following activities are eligible for support—

(1) Development of innovative methods, strategies, curricula, instructional materials, instructional programs, personnel development, or other techniques to meet the special educational needs of eligible children, in general, or of eligible children from particular areas of the world;

(2) Examination of the extent to which various projects effectively meet the special educational needs of eligible children; or

(3) Dissemination through national or regional centers, curriculum materials or exemplary practices that meet the special educational needs of eligible children.

(b) The Secretary may, through a notice published in the FEDERAL REGISTER, select specific activities for funding from among those listed in paragraph (a) of this section to respond to the changing national needs for educating eligible children in general or for educating eligible children from particular areas of the world.

(20 U.S.C. 2943 and 20 U.S.C. 3474(a))

§ 539.21 How is the number of eligible children determined?

(a) On a date specified by the Secretary through a notice published in the FEDERAL REGISTER, an SEA shall count the number of eligible children enrolled in public and nonprofit private schools in each LEA, who have been admitted into the United States—

(1) Less than one year;

(2) One to two years;

(3) Two to three years; or

(4) Three to four years.

(b)(1) For each category in paragraph (a) of this section, the SEA shall count the number of children enrolled at the elementary school level and the number enrolled at the secondary school level.

(2) For the purpose of this count—

(i) Children who are "enrolled at the elementary school level" means children in grades K-6.

(ii) Children who are "enrolled at the secondary school level" means children in grades 7-12.

(20 U.S.C. 2943 and 20 U.S.C. 3474(a))

§ 539.22 To what extent must a State provide educational services to eligible children enrolled in nonprofit private schools?

(a)(1) The SEA shall provide opportunities for eligible children enrolled in nonprofit private schools to receive educational services under this program.

(2) The requirements which must be met by an SEA with respect to eligible children enrolled in nonprofit private schools are contained in EDGAR (34 CFR 76.651-76.662).

(b) If an LEA is unwilling or unable to provide educational services to eligible children enrolled in nonprofit private elementary and secondary schools, an SEA—

(1) Arranges through a subgrant, contract, or cooperative agreement with a public or nonprofit private agency, organization, or institution for the provision of services to those children; or

(2) Provides services directly to those children.

(c) If a State is prohibited by law from providing educational services to children enrolled in nonprofit private elementary and secondary schools, or if the Secretary determines that an SEA is unwilling or has substantially failed to provide educational services on an equitable basis to eligible children enrolled in nonprofit private schools, the Secretary may—

(1) Proportionally reduce the funds granted to the State; and

(2) Arrange for other means of providing services to those children.

(20 U.S.C. 3474(a))

§ 539.23 When does a State submit its application for a grant?

To be eligible for funds, an SEA must transmit its application in accordance with the application notice published in the FEDERAL REGISTER that establishes a deadline for the transmittal of State applications.

(20 U.S.C. 3474(a))

§ 539.24 What documents must an applicant submit to an SEA to receive a subgrant?

To receive a subgrant, an applicant shall submit to the SEA an application containing the following information:

(a) A count of the number of eligible children in its jurisdiction, as required in § 539.21.

(b) A brief description of the educational services to be provided for the eligible children and the estimated costs.

(c) The assurances required in EDGAR (34 CFR 76.301(c)).

(Sec. 412(a)(4) of the Immigration and Nationality Act, as amended and 20 U.S.C. 3474(a))

§ 539.25 When does an applicant submit its application?

An SEA establishes a deadline for receipt of applications for subgrants under this program.

(20 U.S.C. 3474(a))

Subpart D—How Are Grants and Subgrants Made to Applicants Under the State-Administered Program?

§ 539.30 How does the Secretary review an application submitted by an SEA?

The Secretary reviews and approves an application submitted by an SEA if the application complies with the requirements in this part.

(20 U.S.C. 3474(a))

§ 539.31 What formula will be used to distribute funds to SEAs with approved applications?

(a)(1) The most weight will be given to eligible children who have been admitted into the United States for less than one year on the date the child count was made.

(2) Eligible children in paragraph (a)(1) of this section enrolled in elementary and secondary grades will be weighted equally.

(b)(1) Less weight will be given for eligible children who have been admitted into the United States for more than one year on the date the child count was made.

(2) Eligible children in paragraph (b)(1) of this section enrolled in secondary schools will be given more weight than eligible children enrolled in elementary schools.

(c)(1) The Secretary uses the weighting factors in paragraph (d) of this section.

(2) The Secretary may increase or decrease any weighting factor by one or two points to respond to changing needs of eligible children.

(3) The Secretary announces the weighting factors through publication of a notice in the FEDERAL REGISTER.

(d) Weighting factors for the fund distribution formula are presented in the following table:

Recency of arrival in the United States (in years)	Weighting factors by school level	
	Elementary	Secondary
Less than 1	10	10
1 to 2	7	9
2 to 3	4	7
3 to 4	1	3
More than 4	0	0

(e) To determine the amount of a grant—

(1) The applicant's child count for each recency of arrival category is multiplied by the weighting factor for the category;

(2) The products for each category are added; and

(3) The sum of the products are multiplied by the weighted per pupil allocation.

Example: The following table presents a computation for a hypothetical LEA based on the weighting factors in paragraph (d) of this section:

Recency of arrival in the United States (in years)	(a) Number of eligible children	(b) Sample weighting factor	Weighted count (project of col. a times b)
Enrolled in Elementary Grades			
0 to 1	10	10	100
1 to 2	10	7	70
2 to 3	5	4	20
3 to 4	0	1	0
More than 4	0	0	0
Enrolled in Secondary Grades			
0 to 1	10	10	100
1 to 2	10	9	90
2 to 3	5	7	35
3 to 4	0	3	0
More than 4	0	0	0
Total	50		415

(4) In the example above, if the weighted per pupil allocation is $50, the grant award would be $20,750. As an example of how much would be paid on behalf of an individual student, if the weighted per pupil allocation is $50, the payment for a student who has been in this country less than a year would be $500; for a secondary grade student who has been in this country between 3 and 4 years, the payment would be $150.

(20 U.S.C. 2943 and 20 U.S.C. 3474(a))

§ 539.32 How does the Secretary provide for a substantial and disproportionate increase in the enrollment of eligible children that may occur after a grant has been made?

(a)(1) If the Secretary determines that there has been a substantial and disproportionate increase in the enrollment of eligible children, the Secretary may provide SEAs an opportunity to submit evidence of the increase of the number of eligible children enrolled in schools in the State.

(2) Through a notice published in the FEDERAL REGISTER, the Secretary invites SEAs with increased enrollments of eligible children to submit a recount of the number of eligible children enrolled in schools in the State, according to the provisions in § 539.21.

(b) Where funds are available, the Secretary may provide additional assistance to an SEA based on the increase in the number of eligible children in the State, provided that the SEA submits a plan outlining how the additional funds would be spent to provide services for those children.

(c) In distributing funds under paragraph (b) of this section, the Secretary uses the weighting factors in § 539.31.

(d) The Secretary does not decrease the amount of an award to an SEA where there is a decrease in the enrollment of eligible children.

(20 U.S.C. 2943 and 20 U.S.C. 3474(a))

§ 539.33 How are the amounts available for eligible children in each LEA determined?

In determining the amounts available for eligible children in each LEA, the SEA—

(a) Subtracts from the SEA's award the costs budgeted for the administration of the SEA grant award and for technical assistance (These costs may not exceed one percent of the SEA award.); and

(b) Applies the formula in § 539.31 to determine the amounts of funds available for eligible children in each LEA.

(20 U.S.C. 2943 and 20 U.S.C. 3474(a))

§ 539.34 [Reserved]

§ 539.35 What criteria does the Secretary use to review an application under the Development and Dissemination Projects Program?

The Secretary uses the following selection criteria worth a total of 100 points. The relative importance of each criterion is indicated next to the heading of that criterion.

(a) *Plan of operation* (20 points)

(1) The Secretary reviews each application for information that shows that quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(b) *Quality of key personnel.* (7 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

NOTE: The qualification of project personnel should relate to the population served by the project. For example, when reviewing projects that serve Haitian children, the Secretary looks for project personnel who have extensive experience or expertise in the culture and language of the Haitian population.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 76.590—Evaluation by the grantee)

(2) The Secretary looks for information that show methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (3 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Problems addressed.* (20 points)

(1) The Secretary looks for information that shows the extent to which educational problems of national significance are addressed by the project.

(2) The Secretary looks for information that shows the extent to which the project addresses needs that cannot be, or are not being, effectively addressed by State or local efforts.

(g) *Innovativeness.* (20 points)

The Secretary looks for information that shows the extent to which the project involves techniques that are new nationally but that build on current knowledge and research.

(h) *Scope.* (10 points)

The Secretary looks for information that shows the extent to which the applicant proposes a project that—

(1) Is national or regional in scope; and

(2) Provides services, or is likely to improve educational programs, for eligible children throughout the area served.

(i) *Coordination.* (10 points)

The Secretary looks for information that shows the extent to which the project coordinates activities with existing resource and dissemination centers.

(20 U.S.C. 3474(a))

Subpart E—How Are Funds Under the State-Administered Program To Be Spent?

§ 539.40 What are the restrictions on costs under the State-Administered Program?

(a)(1) Funds may not be used under this program for—

(i) Construction, repair, remodeling, or alteration of facilities or sites;

(ii) Payments of stipends to participants in inservice training or other workshops, including costs of participant travel, meals, or lodging associated with this training; or

(iii) Payments for the provision of health or social services.

(2) The restrictions in paragraph (a) of this section do not apply where a subgrant, contract, or cooperative arrangement is made, or direct services are provided, on behalf of 40 or fewer eligible children.

(b) Allowable costs are subject to the applicable cost principles in 34 CFR Part 74.

(20 U.S.C. 2943 and 3474(a))

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PART 603—SECRETARY'S RECOGNITION PROCEDURES FOR NATIONAL ACCREDITING BODIES AND STATE AGENCIES

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Subpart A—Criteria for Nationally Recognized Accrediting Agencies and Associations

Authority: (20 U.S.C. 403(b), 1085(b), 1141(a), 1248(11)); (42 U.S.C. 293a(b), 295f-3(b), 295h-4(1)(D), 298b(f)); (8 U.S.C. 1101(a)(15)(F)); (12 U.S.C. 1749c(b)); (38 U.S.C. 1775(a)), unless otherwise noted.

Source: 39 FR 30042, Aug. 20, 1974, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

§ 603.1 Scope.

Accreditation of institutions or programs of institutions by agencies or associations nationally recognized by the Secretary is a prerequisite to the eligibility for Federal financial assistance of institutions and of the students attending such institutions under a wide variety of federally supported programs. The recognition of such agencies is reflected in lists published by the Secretary in the Federal Register. Inclusion on such list is dependent upon the Secretary's finding that any such recognized agency or association is reliable authority as to the quality of training offered. The Secretary's recognition is granted and the agency or association is included on the list only when it meets the criteria established by the Secretary and set forth in § 603.6 of this part.

(20 U.S.C. 1141(a))

§ 603.2 Definitions.

"Accrediting" means the process whereby an agency or association grants public recognition to a school, institute, college, university, or specialized program of study which meets certain established qualifications and educational standards, as determined through initial and periodic evaluations. The essential purpose of the accreditation process is to provide a professional judgment as to the quality of the educational institution or program(s) offered, and to encourage continual improvement thereof;

"Adverse accrediting action" means denial of accreditation or preaccreditation status or the withdrawal of accreditation or preaccreditation status;

"Agency or association" means a corporation, association, or other legal entity or unit thereof which has the principal responsibility for carrying out the accrediting function;

"Institutional accreditation" applies to the total institution and signifies that the institution as a whole is achieving its educational objectives satisfactorily;

"Regional" means the conduct of institutional accreditation in three or more States;

"Representatives of the public" means representatives who are laymen in the sense that they are not educators in, or members of, the profession for which the students are being prepared, nor in any way are directly related to the institutions or programs being evaluated;

(20 U.S.C. 1141(a))

[39 FR 30042, Aug. 20, 1974, as amended at 45 FR 22536, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 603.3 Publication of list.

Periodically the Secretary will publish a list in the Federal Register of the accrediting agencies and associations which he determines to be reliable authorities as to the quality of training offered by educational institutions or programs, either in a geographical area or in a specialized field. The general scope of the recognition granted to each of the listed accrediting bodies will also be listed.

(20 U.S.C. 1141(a))

§ 603.4 Inclusion on list.

Any accrediting agency or association which desires to be listed by the Secretary as meeting the criteria set forth in § 603.6 should apply in writing to the Director, Division of Eligibility and Agency Evaluation, Office of Postsecondary Education, Department of Education, Washington, D.C. 20202.

(20 U.S.C. 1141(a))

[45 FR 86300, Dec. 30, 1980]

§ 603.5 Initial recognition, and renewal of recognition.

(a) For initial recognition and for renewal of recognition, the accrediting agency or association will furnish information establishing its compliance with the criteria set forth in § 603.6. This information may be supplemented by personal interviews or by review of the agency's facilities, records, personnel qualifications, and administrative management. Each agency listed will be reevaluated by the Secretary at his discretion, but at least once every four years. No adverse decision will become final without affording opportunity for a hearing.

(b) In view of the criteria set forth in § 603.6, it is unlikely that more than one association or agency will qualify for recognition (1) in a defined geographical area of jurisdiction or (2) in a defined field of program specialization within secondary or postsecondary education. If two or more separate organizations in a defined field do seek recognition, they will both be expected to demonstrate need for their activities and show that they collaborate closely so that their accrediting activities do not unduly disrupt the affected institution or program.

(20 U.S.C. 1141(a))

§ 603.6 Criteria.

In requesting designation by the Secretary as a nationally recognized accrediting agency or association, an accrediting agency or association must show:

(a) *Functional aspects.* Its functional aspects will be demonstrated by:

(1) Its scope of operations:

(i) The agency or association is national or regional in its scope of operations.

(ii) The agency or association clearly defines in its charter, by-laws or accrediting standards the scope of its activities, including the geographical area and the types, and levels of institutions or programs covered.

(2) Its organization:

(i) The agency or association has the administrative personnel and procedures to carry out its operations in a timely and effective manner.

(ii) The agency or association defines its fiscal needs, manages its expenditures, and has adequate financial resources to carry out its operations, as shown by an externally audited financial statement.

(iii) The agency's or association's fees, if any, for the accreditation process do not exceed the reasonable cost of sustaining and improving the process.

(iv) The agency or association uses competent and knowledgeable persons, qualified by experience and training, and selects such persons in accordance with nondiscriminatory practices:

(A) To participate on visiting evaluation teams; (B) to engage in consultative services for the evaluation and accreditation process; and (C) to serve on policy and decision-making bodies.

(v) The agency or association includes on each visiting evaluation team at least one person who is not a member of its policy or decision-making body or its administrative staff.

(3) Its procedures: (i) The agency or association maintains clear definitions of each level of accreditation status and has clearly written procedures for granting, denying, reaffirming, revoking, and reinstating such accredited statuses.

(ii) The agency or association, if it has developed a preaccreditation status, provides for the application of criteria and procedures that are related in an appropriate manner to those employed for accreditation.

(iii) The agency or association requires, as an integral part of its accrediting process, institutional or program self-analysis and an on-site review by a visiting team.

(A) The self-analysis shall be a qualitative assessment of the strengths and limitations of the institution or program, including the achievement of institutional or program objectives, and should involve a representative portion of the institution's administrative staff, teaching faculty, students, governing body, and other appropriate constituencies.

(B) The agency or association provides written and consultative guidance to the institution or program and to the visiting team.

(b) *Responsibility.* Its responsibility will be demonstrated by the way in which—

(1) Its accreditation in the field in which it operates serves clearly identified needs, as follows:

(i) The agency's or association's accreditation program takes into account the rights, responsibilities, and interests of students, the general public, the academic, professional, or occupational fields involved, and institutions.

(ii) The agency's or association's purposes and objectives are clearly defined in its charter, by-laws, or accrediting standards.

(2) It is responsive to the public interest, in that:

(i) The agency or association includes representatives of the public in its policy and decision-making bodies, or in an advisory or consultative capacity that assures attention by the policy and decision-making bodies.

(ii) The agency or association publishes or otherwise makes publicly available:

(A) The standards by which institutions or programs are evaluated;

(B) The procedures utilized in arriving at decisions regarding the accreditation status of an institution or program;

(C) The current accreditation status of institutions or programs and the date of the next currently scheduled review or reconsideration of accreditation;

(D) The names and affiliations of members of its policy and decision-making bodies, and the name(s) of its principal administrative personnel;

(E) A description of the ownership, control and type of legal organization of the agency or association.

(iii) The agency or association provides advance notice of proposed or revised standards to all persons, institutions, and organizations significantly affected by its accrediting process, and provides such persons, institutions and organizations adequate opportunity to comment on such standards prior to their adoption.

(iv) The agency or association has written procedures for the review of complaints pertaining to institutional or program quality, as these relate to the agency's standards, and demonstrates that such procedures are adequate to provide timely treatments of such complaints in a manner that is fair and equitable to the complainant and to the institution or program.

(3) It assures due process in its accrediting procedures, as demonstrated in part by:

(i) Affording initial evaluation of the institutions or programs only when the chief executive officer of the institution applies for accreditation of the institution or any of its programs;

(ii) Providing for adequate discussion during an on-site visit between the visiting team and the faculty, administrative staff, students, and other appropriate persons;

(iii) Furnishing, as a result of an evaluation visit, a written report to the institution or program commenting on areas of strengths, areas needing improvement and, when appropriate, suggesting means of improvement and including specific areas, if any, where the institution or program may not be in compliance with the agency's standards;

(iv) Providing the chief executive officer of the institution or program with an opportunity to comment upon the written report and to file supplemental materials pertinent to the facts and conclusions in the written report of the visiting team before the accrediting agency or association takes action on the report;

(v) Evaluating, when appropriate, the report of the visiting team in the presence of a member of the team, preferably the chairman;

(vi) Providing for the withdrawal of accreditation only for cause, after review, or when the institution or program does not permit reevaluation, after due notice;

(vii) Providing the chief executive officer of the institution with a specific statement of reasons for any adverse accrediting action, and notice of the right to appeal such action;

(viii) Establishing and implementing published rules of procedure regarding appeals which will provide for:

(A) No change in the accreditation status of the institution or program pending disposition of an appeal;

(B) Right to a hearing before the appeal body;

(C) Supplying the chief executive officer of the institution with a written decision of the appeal body, including a statement of specifics.

(4) It has demonstrated capability and willingness to foster ethical practices among the institutions or programs which it accredits, including equitable student tuition refunds and nondiscriminatory practices in admissions and employment.

(5) It maintains a program of evaluation of its educational standards designed to assess their validity and reliability.

(6) It secures sufficient qualitative information regarding the institution or program which shows an on-going program evaluation of outputs consistent with the educational goals of the institution or program.

(7) It encourages experimental and innovative programs to the extent that these are conceived and implemented in a manner which ensures the quality and integrity of the institution or program.

(8) It accredits only those institutions or programs which meet its published standards, and demonstrates that its standards, policies, and procedures are fairly applied and that its evaluations are conducted and decisions rendered under conditions that assure an impartial and objective judgment.

(9) It reevaluates at reasonable intervals institutions or programs which it has accredited.

(10) It requires that any reference to its accreditation of accredited institutions and programs clearly specifies the areas and levels for which accreditation has been received.

(c) *Reliability.* Its reliability is demonstrated by—

(1) Acceptance throughout the United States of its policies, evaluation methods, and decisions by educators, educational institutions, licensing bodies, practitioners, and employers;

(2) Regular review of its standards, policies and procedures, in order that the evaluative process shall support constructive analysis, emphasize factors of critical importance, and reflect the educational and training needs of the student;

(3) Not less than two years' experience as an accrediting agency or association;

(4) Reflection in the composition of its policy and decisionmaking bodies of the community of interests directly affected by the scope of its accreditation.

(d) *Autonomous.* Its automony is demonstrated by evidence that—

(1) It performs no function that would be inconsistent with the formation of an independent judgment of the quality of an educational program or institution;

(2) It provides in its operating procedures against conflict of interest in the rendering of its judgments and decisions.

(20 U.S.C. 1141(a))

Subpart B—Criteria for State Agencies

AUTHORITY: Sec. 438(b) of the Higher Education Act of 1965, Pub. L. 89-329 as amended by Pub. L. 92-318, 86 Stat. 235, 264 (20 U.S.C. 1087-1(b)), unless otherwise noted.

SOURCE: 39 FR 30042, Aug. 20, 1974, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

§ 603.20 Scope.

(a) Pursuant to section 438(b) of the Higher Education Act of 1965 as amended by Pub. L. 92-318, the Secretary is required to publish a list of State agencies which he determines to be reliable authorities as to the quality of public postsecondary vocational education in their respective States for the purpose of determining eligibility for Federal student assistance programs administered by the Department.

(b) Approval by a State agency included on the list will provide an alternative means of satisfying statutory standards as to the quality of public postsecondary vocational education to be undertaken by students receiving assistance under such programs.

(20 U.S.C. 1087-1(b))

§ 603.21 Publication of list.

Periodically the Secretary will publish a list in the FEDERAL REGISTER of the State agencies which he determines to be reliable authorities as to the quality of public postsecondary vocational education in their respective States.

(20 U.S.C. 1087-1(b))

§ 603.22 Inclusion on list.

Any State agency which desires to be listed by the Secretary as meeting the criteria set forth in § 603.24 should apply in writing to the Director, Division of Eligibility and Agency Evaluation, Office of Postsecondary Education, Department of Education, Washington, D.C. 20202.

(20 U.S.C. 1087-1(b))

[45 FR 86300, Dec. 30, 1980]

§ 603.23 Initial recognition, and reevaluation.

For initial recognition and for renewal of recognition, the State agency will furnish information establishing its compliance with the criteria set forth in § 603.24. This information may be supplemented by personal interviews or by review of the agency's facilities, records, personnel qualifications, and administrative management. Each agency listed will be reevaluated by the Secretary at his discretion, but at least once every four years. No adverse decision will become final without affording an opportunity for a hearing.

(20 U.S.C. 1087-1(b))

§ 603.24 Criteria for State agencies.

The following are the criteria which the Secretary will utilize in designating a State agency as a reliable authority to assess the quality of public postsecondary vocational education in its respective State.

(a) *Functional aspects.* The functional aspects of the State agency must be shown by:

(1) *Its scope of operations.* The agency:

(i) Is statewide in the scope of its operations and is legally authorized to approve public postsecondary vocational institutions or programs;

(ii) Clearly sets forth the scope of its objectives and activities, both as to kinds and levels of public postsecondary vocational institutions or programs covered, and the kinds of operations performed;

(iii) Delineates the process by which it differentiates among and approves programs of varying levels.

(2) *Its organization.* The State agency:

(i) Employs qualified personnel and uses sound procedures to carry out its operations in a timely and effective manner;

(ii) Receives adequate and timely financial support, as shown by its appropriations, to carry out its operations;

(iii) Selects competent and knowledgeable persons, qualified by experience and training, and selects such persons in accordance with nondiscriminatory practices, (A) to participate on visiting teams, (B) to engage in consultative services for the evaluation and approval process, and (C) to serve on decision-making bodies.

(3) *Its procedures.* The State agency:

(i) Maintains clear definitions of approval status and has developed written procedures for granting, reaffirming, revoking, denying, and reinstating approval status;

(ii) Requires, as an integral part of the approval and reapproval process, institutional or program self-analysis and onsite reviews by visiting teams, and provides written and consultative guidance to institutions or programs and visiting teams.

(A) Self-analysis shall be a qualitative assessment of the strengths and limitations of the instructional program, including the achievement of institutional or program objectives, and should involve a representative portion of the institution's administrative staff, teaching faculty, students, governing body, and other appropriate constituencies.

(B) The visiting team, which includes qualified examiners other than agency staff, reviews instructional content, methods and resources, administrative management, student services, and facilities. It prepares written reports and recommendations for use by the State agency.

(iii) Reevaluates at reasonable and regularly scheduled intervals institutions or programs which it has approved.

(b) *Responsibility and reliability.* The responsibility and reliability of the State agency will be demonstrated by:

(1) Its responsiveness to the public interest. The State agency:

(i) Has an advisory body which provides for representation from public employment services and employers, employees, postsecondary vocational educators, students, and the general public, including minority groups. Among its functions, this structure provides counsel to the State agency relating to the development of standards, operating procedures and policy, and interprets the educational needs and manpower projections of the State's public postsecondary vocational education system;

(ii) Demonstrates that the advisory body makes a real and meaningful contribution to the approval process;

(iii) Provides advance public notice of proposed or revised standards or regulations through its regular channels of communications, supplemented, if necessary, with direct communication to inform interested members of the affected community. In addition, it provides such persons the opportunity to comment on the standards or regulations prior to their adoption;

(iv) Secures sufficient qualitative information regarding the applicant institution or program to enable the institution or program to demonstrate that it has an ongoing program of evaluation of outputs consistent with its educational goals;

(v) Encourages experimental and innovative programs to the extent that these are conceived and implemented in a manner which ensures the quality and integrity of the institution or program;

(vi) Demonstrates that it approves only those institutions or programs which meet its published standards; that its standards, policies, and procedures are fairly applied; and that its evaluations are conducted and decisions are rendered under conditions that assure an impartial and objective judgment;

(vii) Regularly reviews its standards, policies and procedures in order that the evaluative process shall support constructive analysis, emphasize factors of critical importance, and reflect the educational and training needs of the student;

(viii) Performs no function that would be inconsistent with the formation of an independent judgment of the quality of an educational institution or program;

(ix) Has written procedures for the review of complaints pertaining to institutional or program quality as these relate to the agency's standards, and demonstrates that such procedures are adequate to provide timely treatment of such complaints in a manner fair and equitable to the complainant and to the institution or program;

(x) Annually makes available to the public (A) its policies for approval, (B) reports of its operations, and (C) list of institutions or programs which it has approved;

(xi) Requires each approved school or program to report on changes instituted to determine continued compliance with standards or regulations;

(xii) Confers regularly with counterpart agencies that have similar responsibilities in other and neighboring States about methods and techniques that may be used to meet those responsibilities.

(2) Its assurances that due process is accorded to institutions or programs seeking approval. The State agency:

(i) Provides for adequate discussion during the on-site visit between the visiting team and the faculty, administrative staff, students, and other appropriate persons;

(ii) Furnishes as a result of the evaluation visit, a written report to the institution or program commenting on areas of strength, areas needing improvement, and, when appropriate, suggesting means of improvement and including specific areas, if any, where the institution or program may not be in compliance with the agency's standards;

(iii) Provides the chief executive officer of the institution or program with opportunity to comment upon the written report and to file supplemental materials pertinent to the facts and conclusions in the written report of the visiting team before the agency takes action on the report;

(iv) Provides the chief executive officer of the institution with a specific statement of reasons for any adverse action, and notice of the right to appeal such action before an appeal body designated for that purpose;

(v) Publishes rules of procedure regarding appeals;

(vi) Continues the approval status of the institution or program pending disposition of an appeal;

(vii) Furnishes the chief executive officer of the institution or program with a written decision of the appeal body, including a statement of its reasons therefor.

(c) *Capacity to foster ethical practices.* The State agency must demonstrate its capability and willingness to foster ethical practices by showing that it:

(i) Promotes a well-defined set of ethical standards governing institutional or programmatic practices, including recruitment, advertising, transcripts, fair and equitable student tuition refunds, and student placement services;

(ii) Maintains appropriate review in relation to the ethical practices of each approved institution or program.

(20 U.S.C. 1087-1(b))

PART 604—FEDERAL-STATE RELATIONSHIP AGREEMENTS

Subpart A—General

Sec.

604.1 Federal-State relationship agreements.
604.2 Regulations that apply to Federal-State relationship agreements.
604.3 Definitions that apply to Federal-State relationship agreements.

Subpart B—Federal-State Relationship Agreements

604.10 Administrative requirements.
604.11 Planning requirements.
604.12 Changes in the agreement.
604.13 Denial of eligibility.

AUTHORITY: Section 1203 of the Higher Education Act of 1965, as amended by Pub. L. 96-374 (20 U.S.C. 1143), unless otherwise noted.

SOURCE: 45 FR 83221, Dec. 18, 1980, unless otherwise noted.

Subpart A—General

§ 604.1 Federal-State relationship agreements.

(a) A State shall enter into an agreement with the Secretary if it wishes to participate in the following programs authorized by the Higher Education Act of 1965, as amended: The Continuing Education Outreach program, Title I-B, with the exception of sections 116 and 117 of the Act; the State Student Incentive Grant program, subpart 3 of Title IV-A of the Act; and the Undergraduate Academic Facilities Grant program, Title VII-A of the Act. The agreement must contain assurances relating to administration, financial management, treatment of applicants for subgrants and contracts, supplement, not supplant requirements, and planning. These assurances are listed in subpart B of this part. The means by which these assurances will be met must also be described.

(b) The provisions of the agreement replace comparable provisions in annual plans previously required by each applicable program.

(20 U.S.C. 1143)

§ 604.2 Regulations that apply to Federal-State relationship agreements.

The following regulations apply to Federal-State relationship agreements:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State Administered Programs) and 34 CFR Part 77 (Definitions).

(b) The regulations in this part 604.

(20 U.S.C. 1232(a))

§ 604.3 Definitions that apply to Federal-State relationship agreements.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Contract
Private
Public
Secretary
State
Subgrant

(b) *Definitions that apply to this part.* The following definitions apply to this part:

"Act" means the Higher Education Act of 1965, as amended.

"Applicable programs" means the Continuing Education Outreach program, the State Student Incentive Grant program, and the Undergraduate Academic Facilities Grant program.

(20 U.S.C. 1143)

Subpart B—Federal-State Relationship Agreements

§ 604.10 Administrative requirements.

The agreement shall contain the following assurances and a description of the means by which they will be met:

(a) Management practices and procedures will assure proper and efficient administration of each applicable program. The description of these methods shall include the identification of the State entity or entities designated to administer each applicable program as well as the name of the responsible official.

(b) Appropriate fiscal control and fund accounting procedures will be provided for Federal funds received under all titles of the Act.

(c) Federal funds under the applicable programs will not supplant non-Federal funds.

(d) Equitable and appropriate criteria will be used in evaluating applications for subgrants or proposals for contracts under each applicable program.

(20 U.S.C. 1143)

§ 604.11 Planning requirements.

(a) The agreement shall contain an assurance by the State that it has a comprehensive planning or policy formulation process which:

(1) Considers the relationship between State administration of each applicable program and administration of similar State programs or processes;

(2) Encourages State policies that consider the effects of declining enrollments on all sectors of postsecondary education within the State;

(3) Considers the postsecondary educational needs of unserved and underserved individuals within the State, including individuals beyond traditional college age;

(4) Considers the resources of public and private institutions, organizations, and agencies within the State that are capable of providing postsecondary educational opportunities; and

(5) Provides for direct, equitable, and active participation in the comprehensive planning or policy formulation processes by representatives of institutions of higher education—including community colleges, proprietary institutions, and independent colleges and universities—other providers of postsecondary education services, students, and the general public in the State.

(i) Participation shall be achieved through membership on State planning commissions, State advisory councils, or other State entities established by the State to conduct federally assisted comprehensive planning or policy formulation.

(ii) Participation shall be consistent with State law.

(b) The agreement shall include a description of the planning or policy formulation process through which these assurances will be fulfilled.

(20 U.S.C. 1143)

§ 604.12 Changes in the agreement.

(a) The agreement shall remain in effect until substantial changes in administrative practices or planning processes would require its modification.

(b) Routine organizational or personnel changes are not subject to prior modification of the agreement, but information concerning these changes shall be promptly communicated to the Secretary.

(20 U.S.C. 1143)

§ 604.13 Denial of eligibility.

(a) If the Secretary finds that there is a failure to comply substantially with the assurances of § 604.10 then the Secretary, after giving a State reasonable notice and the opportunity for a hearing, shall notify the State that it is ineligible to participate in any applicable program.

(b) To regain eligibility, a State must satisfy the Secretary that the failure to comply has been remedied.

(20 U.S.C. 1143)

PART 605—CONTINUING EDUCATION OUTREACH—STATE-ADMINISTERED PROGRAM

Subpart A—General

Sec.
605.1 Continuing Education Outreach—State-Administered Program.
605.2 Eligible parties.
605.3 Regulations that apply to the Continuing Education Outreach—State-Administered Program.
605.4 Definitions that apply to the Continuing Education Outreach—State-Administered Program.

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make a Grant to a State?

605.20 How does the Secretary initially allot program funds?
605.21 What are the requirements for subsequent allotments?
605.22 How does a State determine the amount of funds to be used for comprehensive statewide planning?
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605.23 How does a State determine the amount of funds to be used for information services?
605.24 How does a State determine the amount of funds to be used for continuing education?

Subpart D—[Reserved]

Subpart E—[Reserved]

Subpart F—What Conditions Must be Met by a State?

605.50 Coordination.
605.51 Limitation on payments to the States.

Subpart G—What Are the Administrative Responsibilities of a State and its Subgrantees and Contractors?

605.60 Annual report.
605.61 Child care project restrictions.
605.62 Administrative funds.

AUTHORITY: Secs. 111 through 115, and 118 through 119 of the Higher Education Act of 1965, as amended by Pub. L. 96-374 (20 U.S.C. 1011-1015; 1018-1019), unless otherwise noted.

SOURCE: 46 FR 46926, Sept. 23, 1981, unless otherwise noted.

Subpart A—General

§ 605.1 Continuing Education Outreach—State-Administered Program.

(a) *General description.* The Continuing Education Outreach—State-Administered Program provides Federal financial assistance primarily to increase access to programs of continuing education for adults whose educational needs have been inadequately served. Recipients shall use this assistance to help traditional and non-traditional learners through—

(1) Comprehensive statewide planning;

(2) Information services; and

(3) Continuing education.

(20 U.S.C. 1011-1015)

(b) *Comprehensive statewide planning.* (1) Each State shall use the funds available for comprehensive statewide planning to support planning, and related studies, designed to achieve—

(i) Improved access to programs of postsecondary education for traditional and non-traditional learners;

(ii) Improved retention of traditional and non-traditional learners in programs of postsecondary education;

(iii) Coordination of educational and occupational information and counseling services for youth and adults throughout the State; and

(iv) More effective and efficient use of resources available for continuing education within the State.

(20 U.S.C. 1013 (a), (b), and (e))

(2) Comprehensive statewide planning funds may also be used to prepare the annual report described in § 605.60.

(20 U.S.C. 1013(b); 1019(a))

(c) *Information services.* Each State shall use the funds available for information services to develop and coordinate new and existing—

(1) Postsecondary education information and counseling services for traditional and non-traditional learners; and

(2) Occupational information and counseling services for youth and adults.

(20 U.S.C. 1014(a))

(d) *Continuing education.* (1) Each State shall use the funds available for continuing education to make subgrants and award contracts for—

(i) Promoting access to and retention in postsecondary educational programs for adults whose educational needs have been inadequately served;

(ii) Expanding and improving postsecondary educational programs that help adults develop their occupational potential and prepare for transitions between education and work;

(iii) Eliminating barriers—posed by previous education or training, age, sex, race, handicap, national origin, rural isolation, or economic circumstances—that may place adults at a disadvantage in seeking postsecondary educational opportunities;

(iv) Strengthening statewide and other mechanisms of information, counseling, and referral that provide access to postsecondary education and serve the special needs of adults; and

(v) Developing strategies to promote the financial self-sufficiency of postsecondary educational programs initiated under this part.

(2) Eligible continuing education projects include such activities as:

(i) Creation or expansion of labor education, training, and technical assistance programs;

(ii) Development of cooperative relationships between State and local labor organizations and institutions and agencies that provide opportunities for continuing education;

(iii) Removal of barriers to continuing education caused by rural isolation or other rural-related factors;

(iv) Preretirement continuing education programs and information services related to legal, vocational, and health services available to older adults;

(v) Promotion of sharing resources for innovative uses of technology including telecommunications, on an inter-state or intra-state basis, to overcome barriers to postsecondary educational opportunities;

(vi) Educational and occupational information and counseling services designed to meet the special needs of adult women, particularly homemakers, and to assist their entry or reentry into postsecondary education and the labor force.

(vii) Collection and dissemination of information, including both the creation and expansion of data banks, on sources of student financial assistance and information designed to assist individuals to make choices among postsecondary institutions, programs, and other educational opportunities;

(viii) Community education service activities, consistent with the purposes of this part, for adults in rural areas;

(ix) Postsecondary educational programs suited to individuals whose educational needs have been inadequately served, especially handicapped persons, older individuals, migrant and seasonal farm workers, individuals who can participate in programs only on a part-time basis, and individuals who otherwise would be unlikely to continue their education beyond high school;

(x) Child care services to assist individuals desiring to participate in continuing education programs in order to enter or re-enter the field of postsecondary education and the labor force; and

(xi) Promotion or delivery of postsecondary educational services to women at the places of their employment or in conjunction with their employment.

(20 U.S.C. 1015)

§ 605.2 Eligible parties.

(a) States that have entered into a Federal-State relationship agreement with the Secretary as specified in 34 CFR Part 604 are eligible to receive grants for statewide planning, information services, and continuing education.

(20 U.S.C. 1012-1015, 1143)

(b) Institutions of higher education, public and private institutions and organizations—including community based educational institutions—business, industry, labor, or any combination of these, are eligible to receive subgrants and contracts from the States for information and counseling services and continuing education projects.

(20 U.S.C. 1014(c), 1015(b))

§ 605.3 Regulations that apply to the Continuing Education Outreach—State-Administered Program.

The following regulations apply to the Continuing Education Outreach—State-Administered Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 77 (Definitions);

(b) The regulations in this Part 605; and

(c) The regulations in 34 CFR Part 604.

(20 U.S.C. 3474)

§ 605.4 Definitions that apply to the Continuing Education Outreach—State-Administered Program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Contract
EDGAR
Fiscal Year
Grant
Private
Project
Public
Secretary
State
Subgrant
Subgrantee

(20 U.S.C. 3474)

(b) *Definitions that apply to this part.* The following definitions apply to this part:

"Adults whose educational needs have been inadequately served" means individuals 18 years of age or older who—because of circumstances of age, sex, low income, handicap, minority status, rural isolation, status of employment or underemployment, lack of education, or other significant barriers—have been discouraged from obtaining equal educational opportunities.

"Continuing education" means postsecondary instruction and support services designed to meet the educational needs of adults, including the expansion of available learning opportunities for adults whose educational needs are inadequately served by current educational offerings in their communities.

"Act" means the Higher Education Act of 1965, as amended.

"Adult population" means the population eighteen years of age and older.

"Youth" means an individual from age 14 through 17 who is eligible for, and is seeking, employment.

(20 U.S.C. 1011(4); 1013(a)(1); 1014(a); 1018)

"Planning for continuing education" means planning to improve access to programs of postsecondary education for adults in a State, particularly those who have been inadequately served, and to promote more effective and efficient use of available resources, including efforts to ensure equal treatment of applicants in the evaluation of subgrant proposals.

(20 U.S.C. 1018; 1221e-3(a)(1); 3474(a))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make a Grant to a State?

§ 605.20 How does the Secretary initially allot program funds?

The Secretary makes the initial allotment of program funds after a State has consummated an agreement with the Secretary as required in 34 CFR Part 604. The allotment is made according to the formula in section 112(a)(1) of the Act.

(20 U.S.C. 1012; 1143)

§ 605.21 What are the requirements for subsequent allotments?

The Secretary makes an allotment to a State in subsequent fiscal years after the Secretary receives a satisfactory annual report as provided for in § 605.60.

(20 U.S.C. 1012, 1013)

§ 605.22 How does a State determine the amount of funds to be used for comprehensive statewide planning?

(a) The amount of funds available for planning depends on the amount of the total annual appropriation for the Continuing Education Outreach Program.

(1) In a fiscal year in which the appropriation is less than $18,500,000, the State shall use at least 15 percent but not more than 20 percent of its allotment for comprehensive statewide planning.

(2) In a fiscal year in which the appropriation is at least $18,500,000 but not more than $23,999,999, the State shall use from ten to fifteen percent of its allotment for comprehensive statewide planning.

(3) In a fiscal year in which the appropriation is $24,000,000 or more, the State shall use up to 10 percent of its allotment for comprehensive statewide planning.

(b) If the State does not wish to receive comprehensive planning funds in a particular fiscal year, the State must so notify the Secretary prior to the beginning of that fiscal year, so that funds can be reallocated to the other States.

(20 U.S.C. 1012(b))

(c) A State may use up to 50 percent of the funds available to it for comprehensive statewide planning for the purpose of supporting continuing education projects.

(d) A State shall use at least 50 percent of the funds remaining for comprehensive statewide planning—after implementing the setaside in paragraph (c) of this section, if any—to plan for continuing education, unless a waiver is granted.

(20 U.S.C. 1013(c))

(e) On application from a State, the Secretary grants a waiver of the requirement in paragraph (d) of this section, if the State satisfactorily demonstrates that—

(1) Planning for postsecondary continuing education has been an integral part of its existing planning process;

(2) It regularly collects data related to adult learners, including those who are being inadequately served;

(3) It periodically assesses the statewide postsecondary educational needs of adults; and

(4) It consults with public advisory groups composed of persons knowledgeable about the postsecondary educational needs of adults.

(20 U.S.C. 1012(b); 1013(c); 1019(c); S. Rept. 96-733, page 8)

§ 605.23 How does a State determine the amount of funds to be used for information services?

A State shall use not less than $50,000 nor more than 12 percent of its allotment, whichever is greater, to provide information services.

(20 U.S.C. 1014(a))

§ 605.24 How does a State determine the amount of funds to be used for continuing education?

A State shall use the funds remaining from its allotments—after reserving the amounts required for comprehensive statewide planning and information services—for subgrants and contracts for continuing education projects.

(20 U.S.C. 1015)

Subpart D—[Reserved]

Subpart E—[Reserved]

Subpart F—What Conditions Must be Met by a State?

§ 605.50 Coordination.

A State shall coordinate its comprehensive statewide planning and information services activities to the maximum extent feasible with all planning and information services under the following programs:

(a) Subpart 4 of Part A of Title IV of the Higher Education Act (Special Programs for Students from Disadvantaged Backgrounds).

(b) Part B of Title IV of the Higher Education Act (Guaranteed and Insured Student Loans).

(c) Section 485 of the Higher Education Act (Institutional and Financial Assistance Information for Students).

(d) The Vocational Education Act.

(e) The Comprehensive Employment and Training Act.

(f) The Older Americans Act of 1965.

(g) The Rehabilitation Act of 1973.

(h) The Career Education Incentive Act.

(i) The Adult Education Act.

(j) The Veterans Readjustment Assistance Act.

(k) Other Federal, State, and local programs that provide educational outreach, guidance, counseling, and information.

(20 U.S.C. 1013(d), 1014(b))

§ 605.51 Limitation on payments to the States.

(a) The Secretary does not make payments to a State in excess of two-thirds of the total costs of the State's program under this part.

(b) The State may not use funds from other Federal programs for matching.

(20 U.S.C. 1019)

Subpart G—What Are the Administrative Responsibilities of a State and Its Subgrantees and Contractors?

§ 605.60 Annual report.

(a) A State that receives funds under this program shall submit to the Secretary at the end of each fiscal year a report on each aspect of its Continuing Education Outreach Program. This report, which the State may combine with its annual performance report under EDGAR, 34 CFR 76.720, must include the following:

(1) A description of each activity supported, including the amount of Federal and non-Federal funds allocated to planning, information services, and continuing education programs.

(2) An analysis of the relationship between the activities carried out and the priorities established by the comprehensive statewide planning process.

(b) The State shall designate the State entity that shall be responsible for the report.

(20 U.S.C. 1013(b); H. Rept. 96-520, page 9)

§ 605.61 Child care project restrictions.

A State may not award subgrants or contracts for the provision of child care services for the benefit of persons participating in continuing education projects unless—

(a) The State entity responsible for comprehensive statewide postsecondary education planning has established a cooperative agreement with the agency within the State responsible for coordinating child care services; and

(b) The grantee or contractor is licensed by the State to provide child care services, or is in the process of renewing its license and is likely to have that renewal approved.

(20 U.S.C. 1015(c))

§ 605.62 Administrative funds.

A State may use up to five percent of the funds available for continuing education, or $40,000, whichever is greater, for the administration of continuing education activities or the direct operation of continuing education projects.

(20 U.S.C. 1015(d))

PART 606—CONTINUING EDUCATION OUTREACH—SPECIAL PROJECTS PROGRAM

Subpart A—General

Sec.

606.1 Continuing Education Outreach—Special Projects Program.
606.2 Eligible grantees.
606.3 Regulations that apply to the Continuing Education Outreach—Special Projects Program.
606.4 Definitions that apply to the Continuing Education Outreach—Special Projects Program.

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

606.10 Eligible activities.
606.11 Funding priorities.

Subpart C—How Does One Apply for a Grant?

606.20 How to apply for funds.

Subpart D—How Does the Secretary Make a Grant?

606.30 Procedures for evaluating applications.
606.31 Criteria for evaluating applications.

Subpart E—What Condition Must be Met by a Grantee?

606.40 Matching requirement.

AUTHORITY: Title I of the Higher Education Act of 1965, as amended by Pub. L. 96-374 (20 U.S.C. 1016), unless otherwise noted.

SOURCE: 46 FR 43966, Sept. 2, 1981, unless otherwise noted.

Subpart A—General

§ 606.1 Continuing Education Outreach—Special Projects Program.

Under the Continuing Education Outreach—Special Projects Program, the Secretary awards grants and contracts for projects designed primarily to demonstrate the effectiveness of alternative providers and approaches in increasing access to postsecondary continuing educational opportunities for underserved adult learners. These regulations govern the award of grants under this program.

(20 U.S.C. 1016)

§ 606.2 Eligible grantees.

The following parties are eligible to receive grants under this program:

(a) Institutions of higher education.

(b) Public and private institutions and organizations, including business, industrial, and labor organizations.

(c) States.

(d) Any combination of these institutions, organizations, or States.

(20 U.S.C. 1016)

§ 606.3 Regulations that apply to the Continuing Education Outreach—Special Projects Program.

The following regulations apply to the Continuing Education Outreach—Special Projects Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (Definitions).

(b) The regulations in this Part 606.

(20 U.S.C. 1016; 20 U.S.C. 1221e-3(a)(1))

§ 606.4 Definitions that apply to the Continuing Education Outreach—Special Projects Program.

(a) *Definitions in EDGAR.* The following terms used in this part as defined in 34 CFR Part 77:

Applicant
Application
Budget period
Contract
EDGAR
Fiscal year
Grant
Grantee
Private
Project
Project period
Public
Secretary
State

(b) *Definitions that apply to this part.* The following definitions apply to this part:

"Act" means Title XII of the Higher Education Act of 1965, as amended.

"Adults whose educational needs have been inadequately served" means individuals 18 years of age or older who—because of circumstances of age, sex, low income, handicap, minority status, rural isolation, status of unemployment or underemployment, lack of education, or other significant barriers—have been discouraged from obtaining equal educational opportunities.

"Continuing education" means postsecondary instruction and support services designed to meet the educational needs of adults, including the expansion of available learning opportunities for adults whose educational needs are inadequately served by current educational offerings in their communities.

(20 U.S.C. 1018)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 606.10 Eligible activities.

The Secretary makes grants for projects that:

(a) Develop and evaluate innovative delivery systems, particularly those involving alternative providers, that increase access to postsecondary education for underserved adults;

(b) Expand the range of educational and community resources that meet the needs of underserved adults for continuing education;

(c) Promote the development of interstate educational delivery systems, cooperative and consortial arrangements, and programs—including telecommunications—that more effectively address regional needs for continuing education;

(d) Stimulate and evaluate creative approaches to the problems of access for adults inadequately served by existing educational offerings;

(e) Develop statewide, regional, or national programs to coordinate educational and occupational information, including information on student financial assistance, through the creation and expansion of data banks for the more effective coordination and dissemination of that information;

(f) Assist States to perform more effectively their functions of authorizing institutions of higher education in their State;

(g) Provide preservice and inservice training to the teachers and administrative personnel involved in child care, including the recruitment and training of low-income parents for positions in child care;

(h) Provide specialized training in early childhood education; or

(i) Develop improved teacher certification criteria for child-care programs.

(20 U.S.C. 1016)

§ 606.11 Funding priorities.

(a) For any fiscal year the Secretary establishes priorities for the funding of proposed projects. The priorities are consistent with the objectives listed in § 606.10. The Secretary announces priorities in the FEDERAL REGISTER.

(b) To be eligible for funding, a proposed project must respond to one of the priorities established by the Secretary.

(20 U.S.C. 1016)

Subpart C—How Does One Apply for a Grant?

§ 606.20 How to apply for funds.

An applicant requesting funds under this part shall use the following procedures:

(a) The procedures contained in EDGAR (34 CFR Part 75, Subpart C); and

(b) The following special application procedures:

(1) On or before the deadline date for submitting its application to the Secretary, the applicant shall submit a copy of its application, with a letter asking for comment, to the State agency responsible for comprehensive postsecondary educational planning under section 1203 of the Act (Federal-State relationship agreements).

(2) The applicant shall attach to its application to the Secretary a copy of its letter requesting the State agency to comment on the application.

(20 U.S.C. 1016)

Subpart D—How Does the Secretary Make a Grant?

§ 606.30 Procedure for evaluating applications.

(a) The Secretary evaluates an application on the basis of the criteria in § 606.31.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum score for each criterion is indicated in parentheses.

(d) The Secretary considers the rank order of applications in selecting projects to be awarded grants.

(20 U.S.C. 1016)

§ 606.31 Criteria for evaluating applications.

(a) *Plan of Operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (7 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (12 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (3 points) The Secretary looks for information that shows—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(f) *Innovation.* (10 points) The Secretary reviews each application to determine the extent to which the proposed project differs from current or past activities in the field of continuing education.

(g) *Responsiveness to priorities.* (14 points)

The Secretary reviews each application to determine the extent to which the proposed project is responsive to one of the priorities established under § 606.11 for the fiscal year in which the application is submitted.

(h) *Replicability.* (12 points)

The Secretary reviews each application to assess the potential replicability or adaptability of the proposed project by other providers of continuing education.

(i) *Dissemination.* (12 points)

The Secretary reviews each application for information that describes the methods the applicant plans to use to disseminate the results of the project to the public and to professionals in the field of continuing education.

(j) *Value to the field of continuing education.* (15 points)

The Secretary reviews each application to assess the degree to which the proposed project would employ, or result in the development of, new approaches, methods, or materials of value in increasing the effectiveness of continuing education programs.

(20 U.S.C. 1016)

Subpart E—What Condition Must Be Met by a Grantee?

§ 606.40 Matching requirement.

A grantee shall pay from non-Federal funds at least one-third of the cost of its project funded under this part.

(20 U.S.C. 1019)

PART 614—COLLEGE HOUSING PROGRAM

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APPENDIX A—GUIDES FOR DETERMINING MINIMUM ENERGY SAVINGS

AUTHORITY: Title IV of the Housing Act of 1950, 64 Stat. 48, 77; Pub. L. 81-475; (12 U.S.C. 1749-1749d). Sec. 306 of the Department of Education Organization Act, Pub. L. 96-88; (20 U.S.C. 3446).

SOURCE: 47 FR 22021, May 20, 1982, unless otherwise noted.

EFFECTIVE DATE NOTE: At 47 FR 22021, May 20, 1982, Part 614 was revised effective July 22, 1982.

For the regulations remaining in effect until July 22, 1982, see 36 FR 24694, Dec. 22, 1971, redesignated at 45 FR 77369, Nov. 21, 1980, and/or Title 34 revised as of July 1, 1981.

Subpart A—General

§ 614.1 College Housing Program.

The College Housing Program provides low-interest loans to institutions of postsecondary education for the construction, rehabilitation, or purchase of housing or other educational facilities for students or faculty members.

(12 U.S.C. 1749-1749d)

§ 614.2 Who is eligible to apply for a loan?

The following are eligible to apply for a loan under the College Housing Program:

(a) Any public or nonprofit private educational institution that offers, or will offer within a reasonable time after completion of the proposed project, at least a two-year program acceptable for full credit toward a bachelor's degree.

(b) Any public educational institution that—

(1) Is administered by an accredited college or university;

(2) Offers technical or vocational instruction; and

(3) Provides residential facilities for some or all of the students.

(c) Any public or nonprofit private hospital that operates—

(1) A school of nursing beyond the level of high school and approved by State authority; or

(2) An internship program approved by a recognized authority.

(d) Any public body, established for the purpose of providing or financing housing or other educational facilities for students and faculty members at any institution referred to in paragraphs (a) or (b) of this section.

(e) Any nonprofit student housing cooperative established for the purpose of providing housing for students at any institution referred to in paragraphs (a) or (b) of this section.

(f) Any nonprofit corporation established for the sole purpose of providing housing or other educational facilities for students or faculty of one or more institutions referred to in paragraphs (a) or (b) of this section if—

(1) The housing or facilities are not restricted to students or faculty on the basis of their membership in or affiliation with any social, fraternal, or honorary society or organization; and

(2) Upon dissolution of the nonprofit corporation all title to any property built or purchased with proceeds of the loan will go to the institutions or for some other nonprofit educational purpose.

(12 U.S.C. 1749c; 1749(g))

§ 614.3 Limitations on eligibility.

(a) An institution may not apply for a reservation of funds for a housing loan under the Act sooner than the fourth year in which Congress makes funds available for the program subsequent to the last reservation of funds for that institution. This does not apply to energy conservation loans. In calculating this interval, the Secretary includes only reservations of funds made after fiscal year 1981.

(b) An institution may not apply for a reservation of funds for any loan under the Act if it is in default on a loan previously made under the Act or the Higher Education Act— whether or not the Secretary has agreed to any deferment—until the default has been removed.

(12 U.S.C. 1749a (c) (1); 1749a (c) (8); 20 U.S.C. 3474 (b))

§ 614.4 What regulations apply to the College Housing Program?

The following regulations apply to the College Housing Program:

(a) The Education Department General Administrative Regulations (EDGAR) 34 CFR 75.170 through 75.173 (Clearinghouse Procedures) and 75.600 through 75.615 (Construction), 34 CFR 77.1 (Definitions), and 34 CFR Part 74 Subpart P.

(b) The regulations in this Part 614.

(20 U.S.C. 3474)

§ 614.5 What definitions apply to the College Housing Program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

EDGAR
Nonprofit
Private
Public
Secretary
State

(20 U.S.C. 3474)

(b) *Definitions that apply to this part.* "Act"means Title IV of the Housing Act of 1950, as amended.

(12 U.S.C. 1749-1749d)

"Assignable square feet" means the square footage of floor-space in facilities designed and available for assignment to specific functional purposes, such as student sleeping rooms, apartments and related dining areas, and including purposes that are ineligible for assistance under Title IV, such as instruction, research, administration, and religious worship.

"Branch campus"means, within an educational institution, a unit that—

(1) Is separately organized;

(2) Is located apart from the parent institution; and

(3) Has its own Federal Interagency Committee on Education (FICE) identification number.

"Construction" means—

(1) Erection of new structures; or

(2) Rehabilitation, conversion, or improvement of existing structures.

(3) Purchase of existing facilities.

"Design capacity" of housing means the number of occupants a building was designed to house, or, if that information is not available, the maximum number of occupants residing in the facility in any of its first three years of use as student housing.

"Development cost"—

(1) This term means the costs of construction of the housing or other educational facilities and the land on which they are located, including necessary site improvements to permit the use of the land for housing or other educational facilities;

(2) However, in the case of the purchase of facilities, the term means the cost as approved by the Secretary.

"Full-time enrollment" means the number of full-time undergraduate and graduate, resident and non-resident students, as reported by the educational institution—for the fall semester of the year prior to that in which the application is filed—to the National Center for Educational Statistics (NCES) of the Department of Education for its annual survey entitled "Fall Enrollment in Institutions of Higher Education."

"Historically residential institution" means an educational institution that prior to 1976 provided on-campus housing for at least 10 percent of its full-time enrollment.

"Housing" means—

(1) New or existing structures suitable for dwelling use by students or faculty, including (i) single-room dormitories and (ii) apartments; and

(2) Dwelling facilities for student occupancy provided by rehabilitation, alteration, conversion, or improvement of existing structures that are otherwise inadequate for the proposed dwelling use.

"Housing shortage" means an existing need for decent, safe, and sanitary housing for currently enrolled full-time students and faculty.

"Other educational facilities" means—

(1) New or existing structures suitable for—

(i) Use as cafeterias or dining halls, student centers or student unions, infirmaries, or other inpatient or outpatient health facilities; and

(ii) Other essential service facilities; and

(2) Structures—

(i) Suitable for the uses in paragraph (1) of this definition; and

(ii) Provided by rehabilitation, alteration, conversion, or improvement of existing structures that are otherwise inadequate for those uses.

"Reasonable commuting distance" means the distance a student can travel in one hour from his or her residence toward the applicant educational institution by automobile or public transportation, whichever is more expeditious.

"Substandard housing" means student housing, either on campus or off campus, that—

(1) Is owned, leased, or subsidized by an eligible institution under § 614.2; and

(2) Fails substantially to meet applicable State or local building code requirements.

(12 U.S.C. 1749c, 1749a(c)(1))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 614.10 Eligible projects.

The Secretary makes loans for two categories of projects:

(a) Projects to reduce fuel consumption or related operating costs of existing housing and other educational facilities as defined in §614.5. These loans are referred to in these regulations as "energy conservation loans."

(b) Projects to alleviate severe student or faculty housing shortage. These loans are referred to in these regulations as "housing loans."

(12 U.S.C. 1749, 1749a(c)(1))

§ 614.11 Conditions for eligibility of project.

The Secretary considers a project eligible to receive assistance only if—

(a) After October 1, 1981 the applicant has not contracted for construction before filing its application, and has not begun construction prior to execution of loan agreement.

(b) The facility will not be used—

(1) For religious worship;

(2) In connection with a school or department of divinity; or

(3) For a school providing either training for religious purposes or principally sectarian instruction.

(12 U.S.C. 1749a(c)(1); *Tilton* v *Richardson*, 403 U.S. 672 (1971))

Subpart C—How Does One Apply for a Loan?

§ 614.20 Submission of application.

(a) An applicant for a reservation of funds for a loan shall submit an application to the Secretary at the time, in the manner, and containing the information specified in the application notice.

(b)(1) An applicant may submit only one application for a reservation of funds for each category of project described in § 614.10.

(2) For purposes of paragraph (b)(1) of this section, the Secretary considers as a separate applicant a branch campus of a multi-campus institution if that branch campus has its own Federal Interagency Committee on Education (FICE) identification number.

(12 U.S.C 1749a(c)(1) and 1749c)

§ 614.21 OMB Circular A-95 requirements and other clearance procedures.

(a) An applicant shall submit a copy of its application to the State and areawide clearinghouses established in compliance with the Office of Management and Budget Circular A-95.

(b) When the applicant submits its application to the Secretary, the applicant shall forward to the Secretary all State and areawide clearinghouses comments.

(c) An applicant shall submit one copy of its application to the appropriate State agency for postsecondary education to give the agency the opportunity to make comments or recommendations on the application. The applicant shall forward any comments it may receive to the Secretary.

(12 U.S.C. 1749a(c)(1), 20 U.S.C. 3474)

§ 614.22 Evidence and assurances.

An applicant shall submit to the Secretary, as part of its application, the following evidence and assurances:

(a) Satisfactory evidence that the applicant has or will have—based on title or lease—an interest in the site, including the right of access, that is sufficient to insure the applicant's undisturbed use and possession of the facilities for not less than the useful life of the facilities or 50 years, whichever is longer.

(b) Satisfactory evidence that the applicant has the necessary legal authority to—

(1) Finance, construct, rehabilitate, purchase or maintain the proposed facilities;

(2) Apply for and receive the proposed loan; and

(3) Pledge or mortgage any assets or revenues to be given as security for the proposed loan.

(c) Satisfactory assurance that if the Secretary offers and the applicant accepts the loan, the applicant will comply with the terms and conditions for repayment of the loan.

(d) Satisfactory assurance that the applicant will secure the loan in a manner the Secretary finds will reasonably assure repayment. The security may be one or a combination of procedures listed in §614.37.

(e) Satisfactory assurance that the applicant will not, without consent of the Secretary, sell, mortgage, encumber, or lease to others during the life of the loan the facility constructed with the aid of the loan.

(12 U.S.C. 1749a(c)(1))

§ 614.23 Demonstration of need for an energy conservation loan.

In order to be considered for an energy conservation loan, an applicant must demonstrate in its application that the proposed project will provide savings in fuel consumption and related costs above those achieved by implementation of the measures similar to those described in Appendix A of this part.

(12 U.S.C. 1749a(c)(1))

§ 614.24 Demonstration of need for a housing loan.

(a)(1) In order to be considered for a housing loan, an applicant must demonstrate in its application a housing shortage in excess of the greater of 50 students or five percent of full-time enrollment.

(2) The percentage of full-time enrollment affected by a housing shortage is determined by dividing the applicant's housing shortage computed in accordance with paragraph (b) of this section, by the applicant's full-time enrollment.

(b) Housing shortage is measured as the sum of—

(1) The number of students in on-campus facilities in excess of the design capacity of the facilities;

(2) The number of students living in substandard housing both on and off campus;

(3) The number of students commuting to the campus from beyond a reasonable commuting distance; and

(4) The number of students residing in facilities leased by the college with leases which will terminate and will not be renewed within 12 months from the date of application.

(12 U.S.C. 1749a(c)(1)

§ 614.25 Application by a nonprofit student housing cooperative.

A nonprofit student housing cooperative—as described in § 614.2(e)—that applies for a reservation of funds for a loan must assure the Secretary at the time of its application that—

(a) The educational institution the proposed project is intended to serve has agreed to cosign the loan; or

(b) If State law in effect on September 7, 1964, prevents the institution from cosigning the loan, the institution has approved the cooperative and the proposed project.

(12 U.S.C. 1749c(b))

§ 614.26 Application by a nonprofit corporation.

(a) The provisions of paragraph (b) of this section apply to a nonprofit corporation—

(1) As described in § 614.2(f); and

(2) That has not been established by the institution or institutions for whose students or faculty the loan is intended to provide housing or other educational facilities.

(b) If a nonprofit corporation that meets the description of paragraph (a) of this section applies for a reservation of funds for a loan, it must assure the Secretary at the time of its application that—

(1) The educational institution or institutions the proposed project is in-

tended to serve have agreed to cosign the loan; or

(ii) If State law in effect on September 7, 1964, prevents the institution or institutions from cosigning the loan, the institution or institutions have approved the corporation and the proposed project.

(12 U.S.C. 1749c(b))

§ 614.27 Facilities located in jurisdiction without applicable building code.

(a) The provision of paragraph (b) of this section applies to an application for a reservation of funds for a housing loan if—

(1) One of the factors supporting the claim of a housing shortage is the existence of substandard housing; and

(2) The facilities that the loan is intended to replace or rehabilitate do not meet the terms of paragraph (2) of the definition of "substandard housing" in § 614.5(b) because the State or local jurisdiction in which those facilities are located—

(i) Has no building code; or

(ii) Has no building code that applies to the facilities or to the applicant.

(b) An applicant affected by the condition described in paragraph (a)(2)(i) or (ii) of this section shall submit to the Secretary, together with its application, evidence that the facilities would not meet the building code of the geographically nearest jurisdiction with a building code pertinent to the deficiency noted in the application.

(12 U.S.C. 1749a(c)(1))

§ 614.28 Opinion of bond or legal counsel.

(a) An applicant shall submit—or arrange to have submitted—to the Secretary, either by bond counsel, as described in paragraph (b) of this section, or legal counsel, as described in paragraph (c) of this section, legal opinions with respect to—

(1) The legality of the note or the bond issue that the applicant proposes to offer to secure the loan;

(2) The legal authority of the applicant to offer the note or bond issue and secure it by the proposed collateral; and

(3) The legality of the debt instrument and collateral on delivery.

(b) As used in this section, "bond counsel" means a law firm or individual lawyer—

(1) Who is thoroughly experienced in the financing of construction or rehabilitation of housing through the issuance of bonds;

(2) Whose approving opinions have been previously accepted by purchasers of bonds offered at public sales; and

(3) Who, if the borrower is a public institution or agency, is a recognized bond counsel in the municipal field.

(c) As used in this section, "legal counsel" means a law firm or individual lawyer—

(1) Having experience in the financing of construction or rehabilitation of housing; and

(2) Whose opinions with regard to that type of financing have been accepted previously by responsible lenders or lending institutions.

(12 U.S.C. 1749a(c)(1))

Subpart D—How Does the Secretary Make a Loan?

§ 614.30 How does the Secretary rank applications for loans?

(a) The Secretary ranks applications for energy conservation loans according to the criteria in § 614.31.

(b) The Secretary ranks applications for housing loans according to the evaluation criteria in § 614.32.

(12 U.S.C. 1749a(c)(1))

§ 614.31 Selection criteria for energy conservation loans.

For projects designed to conserve energy, the Secretary evaluates each application according to the following criteria, for a total of 100 possible points:

(a) *Savings in annual operating costs.* (1) The Secretary examines each application for information that shows the extent to which the proposed project will result in savings in fuel consumption and other energy costs on an annual basis.

(2) The estimated savings in annual operating costs are the difference between—

(i) Average annual routine expenses for heating and cooling and related energy costs for the previous three years; and

(ii) Projected annual operating costs based on current prices of fuel and related services for the same purposes for the proposed project.

(3) The Secretary awards up to 50 points for this criterion.

(b) *Extent of savings compared with assistance.* (1) The Secretary examines each application for information that shows the extent to which the savings projected for the proposed project will recoup the assistance received under this program.

(2) The Secretary awards up to 50 points for this criterion, and assigns the highest score to projects requiring the least number of months.

(12 U.S.C. 1749a(c)(1))

§ 614.32 Selection criteria for housing loans.

For construction projects, the Secretary evaluates each application according to the following criteria, for a total of 100 possible points:

(a) *Previous residential history.* (1) The Secretary examines each application for information that shows whether the applicant qualifies as a historically residential institution.

(2) The Secretary awards 6 points for this criterion.

(b) *Use of existing dormitories.* (1) The Secretary examines each application for information that shows the extent to which the applicant makes effective use of dormitory space that it owns or leases.

(2) Use of dormitory space is measured by the number of assignable square feet per occupant.

(3) The Secretary awards up to 20 points for this criterion, and assigns the highest scores to applicants with the smallest amount of space per occupant.

(c) *Housing deficiency.* (1) The Secretary examines each application for information that shows the extent to which the applicant has a housing deficiency.

(2) Housing deficiency is measured by the number of student accommodations required to—

(i) Eliminate overcrowding; that is, occupancy in excess of design capacity;

(ii) Provide accommodations for students living in substandard housing; and

(iii) Provide accommodations for students living beyond a reasonable commuting distance.

(iv) Provide accommodations for students residing in facilities leased by the college with leases which will terminate and will not be renewed within 12 months from the application date.

(3) The Secretary awards up to 20 points for this criterion and assigns the highest scores to applicants with the greatest housing deficiency.

(d) *Relative housing deficiency.* (1) The Secretary examines each application for information that shows the extent to which the applicant has a relative housing deficiency.

(2) Relative housing deficiency is measured as a percentage obtained by dividing the total housing deficiency in § 614.32(c) by the institution's full-time enrollment.

(3) The Secretary awards up to 20 points for this criterion and assigns the highest scores to applicants with the highest relative housing deficiency.

(e) *Impact of the proposed project.* (1) The Secretary examines each application for information that shows the impact of the proposed project.

(2) Impact is measured by the number of necessary student accommodations the applicant proposes to add.

(3) The Secretary awards up to 17 points for this criterion and assigns the highest scores to the applicants proposing the largest number of necessary accommodations.

(f) *Relative impact of the proposed project.* (1) The Secretary examines each application for information that shows the relative impact of the proposed project.

(2) Relative impact is measured as a percentage obtained by dividing the number of necessary accommodations to be provided by the project by the total housing deficiency obtained under § 614.32(c).

(3) The Secretary awards up to 17 points for this criterion and assigns

the highest scores to applicants with the highest relative impact.

(12 U.S.C. 1749a(c)(1))

§614.33 Apportionment of loan funds.

(a) The Secretary indicates in the application notice published in the FEDERAL REGISTER, the amount of funds available in any fiscal year that will be awarded for projects in each category.

(12 U.S.C. 1749(a)(c)(1))

(b) The Secretary awards to educational institutions in any one State not more than 12.5 percent of the total funds available for loans under this program in any fiscal year.

(12 U.S.C. 1749b)

§614.34 Reservation of funds for applications from historically black colleges and Inversities.

(a) Subject to the restriction in §614.33, the Secretary, as necessary, may deviate from the rank order of applications for energy conservation loans and for housing loans to ensure that not less than 10 percent of total funds available and not less than 10 percent of the number of loans that the Secretary makes are reserved for applications from historically black colleges.

(b) The purpose of this reservation of funds is to assist historically black colleges in remedying the adverse effects of past or present discrimination on the adequacy of those colleges' housing facilities or other educational facilities.

(12 U.S.C. 1749a(c)(1))

§614.35 Determination of non-availability of equally favorable terms and conditions.

(a) The Secretary makes a loan only if the Secretary finds that the applicant is unable to secure from other sources a loan with terms and conditions equally as favorable as the terms and conditions applicable to loans under this part.

(b) In order to assist the Secretary in making this determination, the applicant shall comply with any procedures the Secretary may establish, including—if bonds are to be issued—public advertising for bids.

(12 U.S.C. 1749a(1))

§614.36 Loan agreements.

(a) The Secretary prepares and sends a loan offer to an applicant if—

(1) The application meets all requirements of the Act and the regulations governing administration of the Act; and

(2) The Secretary approves the project and reserves funds for it.

(b) The loan offer—

(1) Contains the terms and conditions for the loan; and

(2) Is conditioned on the acceptance of these terms and conditions.

(c) The accepted loan offer constitutes the agreement between the Secretary and the applicant for the loan.

(12 U.S.C. 1749a)

§614.37 Security for the loan.

(a) A borrower shall evidence its loan by either notes or bonds issued by the borrower, secured by a mortgage, a trust indenture, or project revenue, or any combination thereof.

(b) If the Secretary determines that additional security is needed to reasonably assure loan repayment, the Secretary may require one or more of the following:

(1) A pledge of income from endowment funds.

(2) Securities or other revenue sources.

(3) A mortgage on other facilities.

(4) A guarantee of the payment of principal and interest by a third party.

(12 U.S.C. 1749a(c)(1))

§614.38 Evidence of approved debt instrument.

(a) After signifying to the Secretary its acceptance of a loan offer, a borrower shall furnish to the Secretary a debt instrument in the form the Secretary prescribes in the loan agreement and in accordance with the terms and conditions of the loan agreement.

(b) The approved debt instrument referred to in paragraph (a) of this section shall include as appropriate—

(1) A recorded copy of the executed trust indenture between the borrower

and the trustee institution or other paying agent; and

(2) The bond, note, or other security approved by the Secretary.

(12 U.S.C. 1749(a); 1749a(c)(1))

§614.39 Loan closing.

Loan closing occurs at a time determined by the Secretary.

(12 U.S.C. 1749a(c)(1))

§614.40 Interim financing.

(a) A borrower may arrange for interim financing, subject to approval of the Secretary, to cover the cost of construction pending the loan closing.

(b) If the Secretary finds that the borrower is unable to secure necessary interim financing on reasonable terms, the Secretary may provide for advances against the approved loan.

(12 U.S.C. 1749a(c)(1))

§614.41 Limitation on loan amounts.

(a) The maximum loan that the Secretary makes to an eligible applicant is $3,500,000.

(b) The minimum loan that the Secretary makes to an eligible applicant is $100,000.

(12 U.S.C. 1749a(c)(1), 20 U.S.C. 3474)

Subpart E—What Conditions Must Be Met by a Borrower?

§614.50 Eligible development costs.

Eligible development costs under this program include architectural and engineering services, construction, legal and administrative services, interest during construction, built-in or installed kitchen equipment, such as ranges and refrigerators, and equipment for food service in central dining facilities.

(12 U.S.C. 1749a(c)(1))

§614.51 Ineligible development costs.

Ineligible development costs are the cost of furnishings, other than kitchen and food service equipment, such as beds, dressers, and tables, whether built-in or movable.

(12 U.S.C. 1749c(c); 1749a(c)(1))

§614.52 Additional ineligible costs.

(a) If, under the Act, an applicant files for assistance for a proposed project after the effective date of these regulations, the Secretary excludes from eligible development costs any cost for construction, or for otherwise eligible equipment, if the contract was entered into—

(1) Before the date the applicant filed the application; and

(2) Before the Secretary concurred in the award of the contract.

(b) The Secretary excludes from eligible development costs—

(1) Any costs for land incurred more than two years prior to application date; and

(2) Any costs for the acquisition of an existing structure incurred more than one year prior to the application date.

(12 U.S.C. 1749(c); 1749a(c)(1))

§614.53 Fee for government field expense.

(a) For each approved loan, a borrower shall pay a fixed fee that is sufficient to cover the cost to the Government for the site inspections and reviews.

(b) The fixed fee shall be an amount equal to one-eighth of one percent (.00125) of the loan amount, with a minimum charge of $500 and maximum charge of $1,500.

(c)(1) The borrower shall compute the fixed fee on the loan amount at the time of the original loan agreement.

(2) After the execution of the loan agreement, the borrower may not make an adjustment in the specified fixed fee.

(12 U.S.C.1749d)

§614.54 Construction account.

(a) A borrower shall deposit in a separate bank account known as the Construction Account—

(1) The proceeds of the sale of the bonds or notes;

(2) Any interim advances against the approved loans; and

(3) All other money that the borrower will use in paying for the construction, of the approved project.

(b) If the borrower is expending funds of its own on the project, it shall deposit those funds in the Construction Account and expend those funds prior to obtaining any advances from the Secretary.

(c) The borrower shall make all expenditures for construction, rehabilitation or acquisition from this account.

(d) Accounting for this account shall be in accordance with generally accepted accounting principles.

(12 U.S.C. 1749a(c)(1))

§ 614.55 Investment of idle construction funds.

(a) If the money on deposit in the Construction Account exceeds the estimated disbursements for the next 90 days, the Secretary encourages the borrower to invest those excess funds.

(b) If the borrower chooses to invest the funds referred to in paragraph (a) of this section, the borrower—unless otherwise prohibited by State or local law—shall invest those funds in—

(1) Direct obligations of the U.S. Government; or

(2) Obligations whose principal and interest are guaranteed by the U.S. Government.

(c) An inestment made in accordance with paragraph (b) of this section shall be in obligations that will mature not later than 18 months from the date of the investment.

(d) Any interest earned on the investment of idle funds in the Construction Account during the construction period shall be deposited in the Construction Account. Any such interest shall be credited against the interest expense accruing during the construction period. In the event that interest earned exceeds interest expense, the excess shall be used to reduce the outstanding principal amount of the loan.

(12 U.S.C. 1749a(c)(1))

§ 614.56 Procedure for loan disbursement.

(a) The borrower shall submit requests for loan disbursement on forms prescribed by the Secretary and shall furnish to the Secretary any additional information the Secretary may request.

(b) The Secretary charges interest on the advances at the same rate the Secretary charges interest on the loan.

(12 U.S.C. 1749a(c)(1))

§ 614.57 Disposal of balance remaining in the Construction Account.

Upon full settlement with all contractors, suppliers, and the other parties to whom it has incurred obligations under the project, a borrower shall dispose of any money remaining in the Construction Account in accordance with the provisions of the loan agreement.

(12 U.S.C. 1749a(c)(1))

§ 614.58 Determination of final approved development costs.

(a) For the purpose of determining the final approved development costs, the Secretary may permit a borrower to use—in place of an audit by the Government—a certificate of project development cost prepared on forms prescribed by the Secretary and executed by the borrower.

(b)(1) In conjunction with the Secretary's determination of final approved development costs, the borrower shall submit to the Secretary whatever documentation the Secretary requires.

(2) This documentation may include but is not limited to, a certificate of actual cost—in a form prescribed by the Secretary—showing the actual cost to the borrower for construction, architectural, legal, organizational, and offside costs and other items of expense approved by the Secretary.

(12 U.S.C. 1749c(c); 1749a(c)(1))

§ 614.59 Application of pledged revenues.

(a) A borrower that has pledged project revenues—either net or gross—as security for its loan must deposit all pledged revenues into a separate fund in accordance with the terms of the loan agreement.

(b) This fund is known as the Revenue Fund.

(c) The borrower shall make repayments on the loan from this fund in accordance with the terms of the loan agreement.

(12 U.S.C. 1749a(c)(1)

§ 614.60 Length and maturity of loan.

(a)(1) The maximum repayment period for a housing loan under this program is 30 years, unless the Secretary finds that a longer repayment period is necessary.

(2) In no case may a loan repayment period exceed the lesser of 50 years or the estimated useful life of the facilities to be constructed, renovated or purchased with the proceeds.

(b) The repayment period for an energy conservation loan shall normally be the time required for projected operating savings to equal the costs of the project, plus 2 years.

(c) Loans shall bear interest at a rate not to exceed three percent per annum.

(d) Unless the Secretary authorizes otherwise—

(1) The borrower shall repay the loan in not less than annual nor more than semiannual equal installments of principal and interest.

(2) However, for a reasonable period of time—normally not exceeding two years following the date of the loan—a borrower may make payments of interest only.

(12 U.S.C. 1749(c))

§ 614.61 Borrower's non-financial obligations.

In addition to its financial obligations under the loan agreement, a borrower under this program must—as required in the loan agreement—agree to—

(a) Maintain its status as an eligible educational institution;

(b) Use the project for the purpose or purposes for which the loan was made, unless the Secretary approves a change of purpose;

(c) Maintain insurance on the project facilities; and

(d) Repair and maintain the project facilities.

(12 U.S.C. 1749a(c)(1))

§ 614.62 Deferments.

(a) A borrower may request—and the Secretary may grant—deferment of any repayment due on a loan under this program if the borrower has—

(1) Complied with—

(i) The terms and conditions of the loan agreement; and

(ii) All nonfinancial obligations under § 614.61;

(2) Properly applied and accounted for all assets pledged as security under the loan agreement; and

(3) Submitted a financial plan that satisfies the Secretary that the borrower is remedying the conditions that caused the request for deferment.

(b) If the Secretary agrees to a deferment, that deferment normally does not exceed one year unless the borrower provides evidence, and the Secretary agrees, that a longer deferment is necessary.

(c) The Secretary does not grant a deferment if the borrower proposes to do any of the following:

(1) Use pledged revenues for any purpose or purposes other than that provided in the loan agreement.

(2) Create another lien on the facilities assisted under this program.

(3) Release obligors, co-obligors, or guarantors under the loan.

(4) Request a reduction of principal or interest.

(12 U.S.C. 1749a(c)(8))

APPENDIX A—GUIDES FOR DETERMINING MINIMUM ENERGY SAVINGS

In connection with projects intended to conserve energy, the applicant indicates its compliance with minimum energy conservation measures through completion of the following checklist:

Code: 1=No (no considerable involvement in this activity).

Code: 2=Yes (considerable involvement in this activity).

Code: 3=N.A. (not applicable).

Specific temperature ranges and thermostat settings:
  ☐ 65°-68° Winter
  ☐ 75°-80° Summer
☐ Reduction in illumination levels and lamp wattage
☐ Substantial night and weekend building shutdowns
☐ Consolidation of activities into fewer buildings, particularly during evenings and weekends
☐ Development of energy efficient space allocation practices
☐ Scheduling of institutional vacations during energy intensive periods
☐ Restrictive policy on appliance usage
☐ Restrictive policy on air conditioning installation

- ☐ Reduction of domestic hot water temperature
- ☐ Manual reduction of fresh air makeup
- ☐ Manual monitoring of buildings
- ☐ Work schedule adjustments to maximize daylight working hours
- ☐ Reduction of building heat leakage by using blinds and drapes
- ☐ Maintenance review of existing energy systems:
  - ☐ Inspection and regularized maintenance of steam traps
- ☐ Inspection and correction of valve functions and air filtration systems where needed
- ☐ ORSAT analysis of flue gases
- ☐ Total involvement of institutional community:
  - ☐ Faculty, staff, and student energy committee
  - ☐ Appointment of building energy monitors
  - ☐ Energy briefing sessions with building occupants
  - ☐ Campus-wide energy awareness programs

If the answer to any of the above is "no," please attach a brief explanation.

PART 617—FINANCIAL ASSISTANCE FOR CONSTRUCTION, RECONSTRUCTION, OR RENOVATION OF HIGHER EDUCATION FACILITIES

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AUTHORITY: Secs. 701-782 of Pub. L. 89-329, Title VII, as amended, 86 Stat. 288-303 (20 U.S.C. 1132a—1132e-1), unless otherwise noted.

SOURCE: 45 FR 28669, Apr. 29, 1980, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

Subpart A—General Provisions

§ 617.1 Definitions.

"Academic facilities," as defined in section 782(1)(A) of the Act, are further defined and subdivided into the following categories:

(a) "Instructional and library facilities" means—

(1) All rooms or areas used regularly for instruction of students, for faculty offices, or for library purposes; and

(2) Service areas that adjoin and are used in connection with the rooms or areas referred to in paragraph (a)(1) of this section.

(b) "Instruction-related facilities" means—

(1) All rooms or areas—other than instructional and library facilities—used for purposes related to the instruction of students or for research or for the general administration of the educational or research programs of an institution of higher education; and

(2) Service areas that adjoin and are used in conjunction with the rooms or areas referred to in paragraph (b)(1) of this section.

(c) "Health-care facilities," as authorized under Titles VII A and C, means—

(1) Infirmaries and all other rooms or areas used for medical examination or treatment of students and institutional personnel; and

(2) Service areas that directly serve the rooms or areas referred to in paragraph (c)(1) of this section.

(d) "Related supporting facilities" means all other areas and facilities necessary for the use, operation, and maintenance of instructional and library facilities, instruction-related facilities, or health care facilities. This term includes building service and circulation areas and central maintenance and utility facilities that serve more than one building, to the degree that these central facilities are used to serve academic facilities eligible under Title VII of the Act.

(e) "Public health type facilities" means facilities as defined in section 782(1)(B)(v) of the Act (Definitions), if these facilities are owned, operated, and maintained by the institution of higher education requesting the approval of a Title VII E project and if—

(1) Funds available for the project are used solely for conversion or modernization to economize on the use of energy resources; and

(2) The project is not limited to facilities described in section 782(1)(B)(v) of the Act.

(20 U.S.C. 1132e-1(1)(B)(v))

"Act" means the Higher Education Act of 1965 (Pub. L. 89-329), as amended. Unless otherwise indicated, title references are to titles of the Act.

"Assignable areas"—

(a) Means square footage of floor space in facilities designed and available for assignment to specific functional purposes—such as instruction, research, and administration—and including purposes that are ineligible for assistance under Title VII—such as students' sleeping rooms, apartments, or chapel rooms.

(b) Does not mean—

(1) Areas used for general circulation within a building;

(2) Areas for public washrooms;

(3) Areas for building maintenance or custodial services; or

(4) Areas in central maintenance and utility facilities that exist only to support the operation and use of other structures on the campus and that are not available for assignment to specific functional purposes as illustrated in paragraph (a) of this section.

(20 U.S.C. 1132e-1 (1) and (2))

"Branch campus" means, within an institution of higher education, a unit that—

(a) Is separately organized;

(b) Is located apart from the parent institution; and

(c) Meets in its own right the definition of an institution of higher education as defined in the Act.

(20 U.S.C. 1132e-1(6))

"Capacity/enrollment ratio" means the ratio of (a) the square feet of assignable area of instructional and library facilities to (b) the total student clock-hour enrollment at the campus of an institution. For purposes of this definition, "student clock-hour enrollment" means the aggregate clock hours (sometimes called contact hours) per week in classes or supervised laboratory or shop work for which all resident students—i.e., students enrolled for credit courses on the campus—are enrolled as of a particular date. A campus having a formally established independent study program or programs may include systematically determined equivalents of class or laboratory hours.

(20 U.S.C. 1132a-4)

"Costs required by Section 504."

(a) This term refers to costs for determining eligibility for participation in the program of Federal assistance for the removal of architectural barriers to the handicapped. The term means the costs of reconstruction, renovation, or modification of facilities to remove architectural barriers or otherwise make facilities usable—in whole or in part—by persons with mobility impairments.

(b) However, the amount may not exceed costs necessary to meet the program accessibility standards of 34 CFR Part 104, the regulations implementing Section 504 of the Rehabilitation Act of 1973.

(c) These costs may include only those reconstruction, renovation, or modification costs ascribable to Section 504 that are necessary to make programs or activities accessible and that cannot be avoided through such means as reassignment of classes or other non-structural alternatives.

(d) These costs may also include—

(1) Costs already incurred prior to the filing of an application; and

(2) Costs that are related to facilities otherwise ineligible for Federal assistance under Title VII.

(e) However, these costs may not include—

(1) Costs incurred prior to, or under contract entered into prior to, June 3, 1977;

(2) Costs required in connection with facilities used for religious worship or for a school or department of divinity; or

(3) Costs—incurred or to be incurred—for which Federal grant or loan assistance has been provided or approved under any other Federal program regardless of the percentage of those costs covered by the Federal assistance.

(20 U.S.C. 1132d-11(a)(2)(A); H. Rept. 96-244, page 85)

"Developing institution" means an eligible institution as defined in Section 302 of Title III of the Higher Education Act of 1965 (20 U.S.C. 1052) and the regulations for the Strengthening Developing Institutions Program (34 CFR Part 624).

"Equipment" means a manufactured item that has an extended useful life, is not consumed in use, and has an identity and function that are not lost through incorporation into a different or more complex unit or substance. Equipment is further subdivided into two categories—built-in equipment and initial equipment—defined as follows:

(a) "Built-in equipment" means equipment that is a permanent part of a structure.

(b) "Initial equipment" means equipment—other than built-in equipment—necessary and appropriate for the initial functioning of a particular academic facility for that facility's specific purpose.

(20 U.S.C. 1132e-1(2))

"Financial hardship," for purposes of eligibility for assistance authorized by section 771(a)(2)(A) of the Act, means that the costs required by Section 504 exceed five percent of the applicant's average annual educational and general expenditures, as reported in the annual NCES survey "Financial Statistics of Institutions of Higher Education" for the three most recent institutional fiscal years.

(20 U.S.C. 1132d-11(a)(2)(A); H. Rept. 96-244, page 85)

"Full-time equivalent number of students" means the following:

(a) (1) For purposes of determining State allotments—

(i) The number of full-time students enrolled in programs that consist wholly or principally or work normally creditable toward a bachelor's or higher degree;

(ii) One third of the number of part-time students enrolled in the programs referred to in paragraph (a)(1)(i) of this section;

(iii) Forty percent of the number of students enrolled in programs that are not chiefly transferable towards a bachelor's or higher degree; and

(iv) Twenty-eight percent of the remaining number of the students referred to in paragraph (a)(1)(iii) of this section.

(2) For the purpose of this computation, student enrollment figures for each fiscal year will be those in the most recent Department survey containing data on opening fall enrollments in higher education.

(20 U.S.C. 1132a-1, 1132a-2)

(b) (1) For purposes of reporting undergraduate enrollment trends and projections in connection with an application for financial assistance for an individual institution under Title VII A of the Act, the "full-time equivalent number of students" may be defined by each State commission through a specific provision in its State plan.

(2) If a State plan does not define the term, "full-time equivalent number of students"—for application purposes—means the total number of full-time students plus one-third of the number of part-time students.

(c) For the purpose of the definition of "full-time equivalent number of students," full-time students are those carrying at least 75 percent of a normal student-hour load.

(20 U.S.C. 1132a-4)

"High absolute cost," for purposes of eligibility for assistance authorized by section 771(a)(2)(A) of the Act, means that the "costs required by Section 504" on the campus for which an application is submitted exceed $500,000.

(20 U.S.C. 1132d-11(a)(2)(A); H. Rept. 96-244, page 85)

"Institution" or "institution of higher education" means that part of an educational institution that meets the requirements in section 1201(a) of the Act. The term "educational institution" is limited to establishments at which teaching is conducted.

(20 U.S.C. 1141(a))

"Period of Federal interest," in improvements financed in whole or in part by grants or loans for Title VII E purposes, means—

(a) With respect to a grant, a period of 10 years from the completion of the reconstruction or renovation; and

(b) With respect to a loan, the period in which the loan is outstanding.

(20 U.S.C. 1132d-11(d))

"Program accessibility," for purposes of Section 504—and as applied to projects for the removal of architectural barriers under Title VII E—is defined in 34 CFR 104.21 through 104.23.

"Project" means all or a portion of one or more structures—

(a) That are eligible for grant or loan assistance under a particular part of Title VII;

(b) For which grant or loan assistance is requested in a single application; and

(c) That are part of a unified construction, reconstruction, or renovation activity on the same campus.

(20 U.S.C. 1132e-1(2))

"Reconstruction or renovation project under Title VII E of the Act" means a reconstruction or renovation project designed primarily to enable an institution to—

(a) Economize on the use of energy resources;

(b) Bring its academic facilities into conformity with the requirements of the act of August 12, 1968, commonly known as the Architectural Barriers Act of 1968; or

(c) Bring its academic facilities into conformity with environmental protection or health and safety programs mandated by Federal, State, or local law, if those requirements were not in effect at the time the facilities were constructed.

(20 U.S.C. 1132d-11(a))

"Section 504" means Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, as amended) and the implementing regulations (45 CFR Part 84).

"State commission" means, in each State, the designated or established agency that is broadly representative of the public and of institutions of higher education in that State.

(20 U.S.C. 1132a-3; 1142a)

"State plan" means the document—submitted by a State and approved by the Secretary—that describes the standards, methods, and administrative procedures the State commission uses to—

(a) Review each project proposed by an applicant in its State for Federal assistance under Title VII A of the Act;

(b) Determine and recommend the relative priority of that project; and

(c) Determine and recommend for that project the Federal share of the costs eligible for Federal financial assistance.

(20 U.S.C. 1132a-3(a))

§ 617.2 Regulations that apply to the Title VII program.

(a) (1) Assistance provided under Title VII of the Act, except under Part C of that title, is subject to applicable provisions in the Education Department General Administrative Regulations (EDGAR), 34 CFR Part 75, with the following exceptions:

(i) Section 75.107, Applications for new grants under a discretionary grant program.

(ii) Sections 75.150 through 75.154, regarding State approval procedures.

(iii) Sections 75.155 through 75.160, regarding State comment procedures.

(iv) Sections 75.200 through 75.206, regarding selection of new projects.

(v) Sections 75.215 through 75.222, regarding selection procedures.

(vi) Section 75.232, The cost analysis; basis for grant amount.

(vii) Section 75.233, Setting the amount of the grant.

(viii) Sections 75.580 and 75.581, regarding coordination.

(2) Assistance under Part C of Title VII is subject to the provisions of EDGAR relating to construction, 34 CFR 75.600 through 75.615.

(20 U.S.C. 1232(a)(1))

(b) Assistance provided under Title VII is also subject to the applicable provisions in this part.

(20 U.S.C. 1132a-1132e-1)

§ 617.3 [Reserved]

§ 617.4 Fiscal control and fund accounting procedures by State commissions.

To insure proper disbursement of and accounting for Federal funds paid to a State commission for the administration of its State plan, the plan must contain the fiscal control and fund accounting procedures that the Secretary requires.

(20 U.S.C. 1132a-3; 34 CFR Part 75-EDGAR)

§ 617.5 Retention of records by State commissions.

A State commission shall—

(a) Establish a complete file on each Title VII A application;

(b) Inform applicants of official actions and determinations by letter or similar type of correspondence;

(c) Retain records regarding each application for at least two years after final action with respect to that application; and

(d) Maintain for at least three years a full record of—

(1) All hearings on appeals under section 704(a)(5) (State plan) of the Act; and

(2) All proceedings by which it establishes priorities and recommended Federal shares for eligible projects considered as of each specified closing date.

(20 U.S.C. 1132a-3(a))

§ 617.6 Determination of costs eligible for Federal assistance.

(a) In general, if an applicant submits an application for assistance under Title VII A, VII B, VII C, or VII E of the Act, the Secretary determines separately for each proposed project the costs eligible for Federal assistance. The Secretary bases the determination on the following:

(1) The date on which the applicant incurred or contracted for a given cost.

(2) Whether the cost is an allowable development cost, as defined in section 782(3) of the Act (Definitions).

(3) Whether the applicant has incurred that cost in accordance with these regulations.

(4) That portion of the facility that is eligible under the type of assistance for which the applicant has submitted the application.

(5) The amount of any other Federal financial assistance the applicant has obtained or is assured of obtaining for the project.

(b) If, under the Act, an applicant files for Federal assistance for a project for the first time on or after the effective date of these regulations, the Secretary excludes the following from eligible development costs:

(1) Any cost for land incurred more than two years before the applicant files the application.

(2) Any cost for land in connection with an application for reconstruction or renovation.

(3) Any cost for the acquisition of a structure incurred more than one year before the applicant files the application.

(4) Any cost for the acquisition of a structure in connection with an application for reconstruction or renovation.

(5) Any cost for initial equipment incurred before the date the applicant files the application.

(6) Any cost for construction, reconstruction, renovation, or built-in equipment if the contract was entered into—

(i) Before the date the applicant filed the application; and

(ii) Before the Secretary concurred in the awarding of the contract.

(c) In order to assume the eligibility of costs, a grantee must obtain approval of those costs—

(1) Before advertising for or soliciting bids; and

(2) Before awarding any contract for construction, reconstruction, or renovation under the Act.

(d) The Secretary approves costs only after the Secretary or the appropriate official of another Federal agency has approved Federal assistance for the construction, reconstruction, or renovation of the facility.

(e) (1) If an applicant submits an application for Federal assistance for a project proposed under section 771(a)(2)(A) of the Act, the Secretary bases the determination of costs eligible for assistance on—

(i) The provisions of paragraphs (a) through (d) of this section (§ 617.6); and

(ii) That portion of "costs required by section 504" which is—

(A) Otherwise eligible under this section (§ 617.6); and

(B) In excess of the minimum costs required for an applicant to qualify for assistance under the definition of "financial hardship" or the definition or "high absolute costs."

(2) In addition to costs excluded under paragraph (b) of this section, ineligible costs under paragraph (e)(1) of this section include—

(i) Any costs required under Section 504 to make accessible facilities that do not meet the definition of "academic facilities" as contained in Section 782(1) of the Higher Education Act of 1965. If a facility is a combination of academic facilities and nonacademic facilities, the primary use of the facility determines the overall eligibility of the costs involved in connection with the facility; and

(ii) Costs required by Section 504 in connection with any facility acquired by the applicant after June 3, 1977.

(20 U.S.C. 1132a-6(a)(2)(F), 1132e-1 (3) and (4) and 1132d-11(a)(2)(A))

§ 617.7 Urgency of need for projects of public institutions.

(a) This section does not apply to projects authorized under Title VII E.

(b) (1) In addition to other eligibility requirements in the Act and these regulations, an application from a public institution of higher education must meet the requirements of urgency as described in paragraph (b)(2) of this section.

(2) Unless the Secretary or the State commission, as appropriate, determines that the need for the project is urgent in terms of the capacity of other public institutions of higher education that enroll students from basically the same geographic areas as the applicant does—

(i) The Secretary—in the case of an application under Part B, C, or D of Title VII—does not approve the application; and

(ii) The commission—in the case of an application under Part A—may not approve the application.

(c) (1) The Secretary or the commission, as appropriate, also bases a determination of urgency of need under paragraph (b) of this section on whether—

(i) The applicant has a history of not serving persons of a particular race, color, or national origin; or

(ii) There are within the geographic area the applicant serves one or more other public institutions of higher education that have a history of not serving persons of a particular race, color, or national origin.

(2) If either condition described in paragraph (c)(1) of this section is present, the Secretary determines—or the commission, in the case of an application under Part A, shall determine—that urgency of need does not exist unless the applicant provides evidence satisfactory to the Secretary—or to the commission, in case of an application under Part A—that the proposed project and the proposed use of the facilities to be constructed, reconstructed, or renovated under the project will not—

(i) Establish or increases the identifiability of any of the institutions on the basis of race, color, or national origin; or

(ii) Impede the elimination of the identifiability of any of the institutions on the basis of race, color, or national origin.

(20 U.S.C. 1132a-4, 1132b, 1132c-4, 1132d-1 and Shannon vs. HUD, 436 F.2d 809)

§ 617.8 Grants and loans for reconstruction and renovation projects authorized under Title VII E of the Act.

An application for grant or loan assistance for a reconstruction or renovation project under Title VII is subject to the following provisions:

(a) The Secretary does not consider a project having a total eligible cost, as specified in paragraph (b) of this section of less than $10,000.

(b) (1) The Secretary bases the determination of costs eligible for Federal assistance on a review of each application.

(2) (i) The Secretary considers as eligible only those costs specifically related to one—or a combination—of the reconstruction or renovation purposes specified in the definition of "Reconstruction or renovation project under Title VII E of the Act" in § 617.1.

(ii) However, the Secretary may approve costs not specifically related to the purposes in that definition to an extent not to exceed 10 percent of costs that are specifically related, if the Secretary finds that the costs not specifically related are part of the project for which Federal assistance is requested.

(c) The Secretary does not approve an application unless it contains sufficient information to demonstrate that the applicant's proposed project meets the following requirements:

(1) For assistance for energy conservation, the applicant—

(i) Must have accomplished minimum energy conservation measures required by the Secretary; and

(ii) Must have demonstrated that the proposed project will result in significant savings in energy consumption or related costs.

(2) For assistance for the removal of architectural barriers for the handicapped, the project must—

(i) Be deemed necessary to provide program accessibility under Section 504; and

(ii) Meet the most recently published standards of the American National Standards Institute (ANSI Standards).

(20 U.S.C. 1132d-11(a)(2)(A); H. Rept. 96-244, page 85)

(3) For assistance in meeting environmental or health and safety requirements, the project must be required by local, State, or Federal law.

(4) (i) An application involving a combination of the purposes in paragraphs (c)(1), (2), or (3) of this section must satisfy each of the specified requirements.

(ii) Any portion of an application not meeting the applicable requirements is ineligible for assistance, except as permitted under paragraph (b)(2)(ii) of this section.

(d) The Secretary awards a grant or loan on condition that the recipient award the contract or begin on-site work within 18 months from the date of loan approval or the date of grant approval or—in the case of a recipient having both a grant and a loan—the earlier of the date of loan approval or the date of grant approval.

(e) If, during the period of Federal interest, as defined in § 617.1, the recipient of a grant or loan ceases to use the reconstructed or renovated facilities as academic facilities, the recipient—or its successor in title or possession—shall—

(1) Immediately repay any outstanding loan balance plus interest accrued to the date of repayment; and

(2) Repay any grant in an amount whose ratio to the depreciated value of the improvement is the same as the ratio of the original grant to the original cost of the improvement. For this purpose the Secretary computes the depreciated value of the improvement by using the straight-line method at a rate of 10 percent a year from the date of the completion of the reconstruction or renovation.

(20 U.S.C. 1132d-11)

Subpart B—Grants for Construction, Reconstruction, or Renovation of Academic Facilities under Title VII A of the Act

§ 617.11 Institutional eligibility.

(a) Two categories of institutions of higher education are eligible for assistance under Title VII:

(1) Under section 702 (Public Community Colleges and Public Technical Institutes) of the Act—

(i) Public community colleges;

(ii) Public technical institutes; and

(iii) Branch campuses of other types of public institutions of higher education, provided that—

(A) The parent institution offers four or more years of higher education;

(B) The branch campus offers the types of programs specified in section 782(6) (definition of "public community college and public technical institute") of the Act; and

(C) The branch campus is located in a community other than the community in which the parent institution is located.

(2) Under section 703 (Institutions of Higher Education other than Public Community Colleges and Public Technical Institutes) of the Act, other institutions of higher education.

(b) An institution qualifies for grants under section 702 of the Act if the Secretary determines that—

(1) The institution meets the requirements of both of the following definitions in the Act:

(i) Section 782(3).

(ii) Section 1201(a) (definition of "institution of higher education"); and

(2) In the case of a public community college or public technical institute, the State commission has found that—

(i) The institution is organized principally to provide two-year academic programs of the types specified in section 782(6) of the Act; and

(ii) More than 50 percent of the institution's full-time equivalent student enrollment is in those types of programs.

(c) An institution qualifies for grants under section 703 of the Act if the Secretary determines that the institution does not meet the requirements of section 702 of the Act but does meet the requirements of section 1201(a) of the Act.

(d) An otherwise eligible institution of higher education or a cooperative graduate center board (as defined in section 782(8) of the Act) is eligible for grants under Title VII A to reconstruct or renovate graduate academic facilities to meet any of the purposes of Title VII E.

(20 U.S.C. 1132a-1; 1132a-2; 1132d-11; 1132e-1(6); 1132e-1(8); 1141(a))

§ 617.12 Eligible applicants under section 771(a)(2)(A) of the Act.

(a) Eligible applicants for assistance to remove architectural barriers to the handicapped for purposes of program accessibility under Section 504 are institutions of higher education or cooperative graduate center boards that—

(1) Meet the eligibility requirements of § 617.11; and

(2) Demonstrate, to the satisfaction of the State commission, that their "costs required by Section 504" fall within the definition of "financial hardship" or the definition of "high absolute cost."

(b) If an applicant qualifies under both definitions in paragraph (a)(2) of this section, the State commission shall consider the application under the definition that is more advantageous to the applicant.

(20 U.S.C. 1132(a)(2)(A); H. Rept. 96-244, page 85)

§ 617.13 State plans.

(a) (1) For each fiscal year that it desires to participate in the Title VII A program, a State shall submit a plan to the Secretary.

(2) The Secretary determines the form in which the State submits its plan and specifies the type of information that the State shall supply.

(3) The plan shall specify the criteria by which the State determines relative priorities of projects (as explained in § 617.14).

(4) The Secretary must receive the plan at least 60 days prior to the first closing date set out in the plan.

(5) The Secretary approves the plan if the Secretary is satisfied it meets the requirements of section 704(a) (submission and contents of State plans) of the Act.

(b) If the State intends to continue its existing plan for the following fiscal year, the Secretary must receive notification in writing at least 60 days before the first closing date of that next fiscal year.

(c) *Amendments to State plans.* (1) The Secretary determines the form in which the State submits a proposed amendment to its plan.

(2) The State may at any time submit an amendment to its plan.

(3) The State shall uniformly apply any amendment to all applications received by the first closing date following the approval of that amendment.

(4) Unless otherwise specified in the State plan, an amendment becomes effective immediately when the Secretary approves it.

(5) Paragraph (c)(4) of this section does not apply to an amendment that—

(i) Affects the standards and methods for determining priorities;

(ii) Alters the Federal share; or

(iii) Changes a closing date.

(6) The types of amendments referred to in paragraph (c)(5) of this section become effective—

(i) No sooner than 60 days after the Secretary receives them; and

(ii) In no case, no sooner than 30 days after the Secretary approves them.

(7) Amendments of a State plan required by legislation or new or revised regulations may be effective immediately after the Secretary approves them.

(20 U.S.C. 1132a-3)

§ 617.14 Criteria for determining relative priorities of eligible projects.

The following requirements govern the standards and methods for determining priorities in ranking projects under a State plan:

(a) A State shall specify separately in its plan criteria and methods for determining the relative priorities of eligible projects for the construction, reconstruction, or renovation of academic facilities for—

(1) Public community colleges and public technical institutes; and

(2) Other institutions of higher education.

(b) (1) The State commission shall assign points to each criterion according to an objective method contained in the State plan.

(2) In determining relative priorites for institutions and branch campuses,

the commission shall apply each criterion uniformly.

(c) The State shall develop its critiera and methods for determining relative priorities on the basis of—

(1) Information to be included by the applicant in the application form that the Secretary prescribes;

(2) Supplemental information requested from all applicants by the State commission; and

(3) Data on file with the State commission, including public reports or publications.

(d) The State shall specify in its plan criteria and methods for determining priority between or among applications receiving identical scores.

(e) Among its criteria for determining relative priorities for institutions and branch campuses, the State shall include the following:

(1) *Increase in enrollment.* (i) One or more criteria shall deal with the extent of the estimated numerical or percentage increase, or both, in full-time equivalent undergraduate student enrollment at the campus at which the construction, reconstruction, or renovation is to take place.

(ii) This estimated increase shall cover five fall terms separately, starting with the fall term preceding the closing date for which the application is being considered and each of the next four fall terms after that closing date.

(iii) The State commission shall assign at least five percent of the total possible point score to this criterion.

(iv) The provisions of paragraphs (e)(1)(i), (ii), and (iii) of this section shall not apply to an application under Title VII E.

(2) *Increase in capacity.* (i) One or more criteria shall deal with the amount or percentage, or both, by which the proposed project will increase the assignable area in instructional, library, and health care facilities at that campus.

(ii) The commission shall assign at least 10 percent of the total possible point score to this criterion.

(iii) The provisions of paragraphs (e)(2)(i) and (ii) of this section shall not apply to an application under Title VII E.

(3) *Use of existing facilities.* (i) One or more criteria shall deal with the effective use of existing academic facilities.

(ii) The commission shall assign at least five percent of the total possible point score to this criterion.

(4) *Enrollment of low-income students.* (i) A criterion shall deal with the extent of the applicant's commitment to the enrollment of a substantial number of students from low-income families.

(ii) The commission shall assign at least five percent of the total possible point score to this criterion.

(5) *Enrollment of disabled veterans.* (i) A criterion shall deal with the extent of the applicant's commitment to the enrollment of a substantial number of disabled veterans returning to civilian life.

(ii) The commission shall assign at least five percent of the total possible point score to this criterion.

(f) The State plan may include additional objective criteria for determining relative priorities as long as none of those criteria is inconsistent with the criteria specified in paragraph (e) of this section.

(g) The State plan may not consider adverse to the ranking of an application an institution's readiness to admit out-of-State students.

(h) The State plan may not consider any of the following as a priority either in favor of or adverse to the ranking of an application:

(1) The type of control or sponsorship of the applicant institution.

(2) The fact that the project had commenced before the date of the application.

(3) The fact that part of the cost of the project had been incurred prior to, or under a contract entered into before, the date of the application.

(i) The commission shall insure that all potential applicants are informed about the forms, definitions, and supplementary data sources that the commission uses—

(1) In applying the required and optional criteria in the State plan; and

(2) In determining relative priorities.

(20 U.S.C. 1132a-5(a))

(j) For projects authorized under section 771(a)(2)(A) of the Act—for the removal of architectural barriers for purposes of Section 504 accessibility—the State plan shall, in addition to the criteria in paragraphs (e) (3), (4), and (5) of this section, include at least the following criteria:

(1) *Amount of assignable square feet of academic facilities to be made accessible by the proposed project.* (i) One or more criteria shall deal with the extent to which eligible academic facilities will be made accessible by the proposed project.

(ii) The commission shall assign at least 10 percent of the total possible point score to this criterion.

(2) *Percent of assignable square feet of academic facilities to be made accessible by the proposed project.* (i) One or more criteria shall deal with the percentage of assignable square feet of eligible academic facilities that will be made accessible on that campus by the proposed project.

(ii) The commission shall assign at least 10 percent of the total possible point score to this criterion.

(3) *Percent of "costs required by Section 504" incurred by the applicant as of the application filing date.* (i) One or more criteria shall give recognition to the extent to which an institution undertook compliance with Section 504 without Federal financial assistance.

(ii) The commission shall assign at least 10 percent of the total possible point score to this criterion.

(4) *Age of buildings.* (i) One or more criteria shall deal with the percentage of gross square feet of structural space—on the applicant's campus—constructed before January 1, 1960 or some other uniformly applicable date that the State commission considers more appropriate.

(ii) The commission shall assign at least 10 percent of the total possible point score to this criterion.

(5) *"Costs required by Section 504" per full-time equivalent student enrollment.* (i) One or more criteria shall deal with the extent of the Section 504 compliance cost per full-time equivalent student enrolled at the applicant institution.

(ii) The commission shall assign at least 15 percent of the total possible point score to this criterion.

(6) *"Costs required by Section 504" per square foot of total assignable areas.* (i) One or more criteria shall deal with the extent of the Section 504 compliance costs per square foot of total assignable areas at the institution or branch campus for which application for assistance has been submitted.

(ii) The commission shall assign at least 15 percent of the total possible point score to this criterion.

(7) *Optional.* The State commission may assign in the State plan 15 percent of the total possible point score to other criteria the commission determines appropriate, provided those criteria are approved by the Secretary.

(20 U.S.C. 1132d-11(a)(1)(A); H. Rept. 96-244, page 85)

§ 617.15 Conditions for grant approval.

(a) With the exception of paragraphs (e) and (f) of this section, this section does not apply to an application for a project authorized under Title VII E.

(b) The Secretary approves an application under Title VII A—other than an application under Title VII E—only if the Secretary is satisfied, on the basis of information submitted with the application, that—

(1) The facilities included in the proposed project are intended predominantly for—

(i) Programs of undergraduate instruction or programs of extension and continuing education;

(ii) Health care to students or personnel of the institution; or

(iii) Both;

(2) The applicant meets the requirement of section 705 (Eligibility for Grants) of the Act; and

(3) The application meets all requirements of section 707(a) submission and contents of applications of the Act.

(c) (1) In order to determine that an institution of higher education is eligible for a grant in accordance with section 705 of the Act, a State commission must determine that—

(i) The project proposed by the institution will provide a substantial expansion of student enrollment capacity, health care capacity, or extension and continuing education capacity; and

(ii) A substantial expansion or creation of capacity is urgently needed.

(2) (i) To establish that a proposed project will provide a substantial expansion of student enrollment capacity, health care capacity, or extension and continuing education capacity, the State commission must determine that—

(A) The increase in any one of the three types of capacities will exceed 10 percent of current capacity; or

(B) In the case of enrollment capacity, the increase will be not less than 10,000 square feet of instructional and library space.

(ii) For purposes of paragraphs (b)(1)(i) and (b)(2)(i) of this section—

(A) "Student enrollment capacity" means instructional and library facilities;

(B) "Health care capacity" means infirmaries and all other rooms or areas designed to be used for medical examination or treatment of students and institutional personnel; and

(C) "Extension and continuing education capacity" means academic facilities used principally for extension and continuing education programs of the institution.

(3) To establish that substantial expansion or creation of capacity is urgently needed, the State commission must consider the following:

(i) The planned enrollment growth of the institution. This growth must be at least 10 percent over four years.

(ii) The use of existing space—as indicated by a low capacity/enrollment ratio or another measure of use—at the campus the applicant has proposed for expansion; and

(iii) Whether there are serious deficiencies in the quality of the applicant's programs due to inadequacies of space.

(4) As used in section 705 of the Act, "other construction, reconstruction, or renovation to be undertaken within a reasonable time" means construction, reconstruction, or renovation approved to start within one year of the date of the application.

(d) In determining whether an institution of higher education would experience a decrease in enrollement capacity if an urgently needed facility were not constructed, reconstructed, or renovated, the Secretary gives consideration to—

(1) The age and condition of instructional and library facilities to be withdrawn from use; and

(2) Any other factors that will cause facilities to be functionally inadequate for instructional or library purposes.

(20 U.S.C. 1132a-6)

(e) The Secretary approved an application under Title VII E only if the Secretary is satisfied, on the basis of information submitted with the application, that—

(1) The application meets the basic provisions of paragraphs (a) and (c) of § 617.8; and

(2) The application is recommended by the State commission according to the priority system established in the State plan.

(20 U.S.C. 1132d-11(a))

(f) In the case of applications for assistance under section 771(a)(2)(A) of the Act, the State commission, prior to ranking those applications, shall review the applications to determine that—

(1) Costs claimed as qualifying for "financial hardship" or "high absolute cost" are or were "costs required by Section 504"; and

(2) The proposed projects are required for compliance with Section 504.

(20 U.S.C. 1132d-11(a)(2)(A); H. Rept. 96-244, page 85)

§ 617.16 Application closing dates.

(a) A State shall establish in its State plan closing dates for submission of applications for funds allotted under sections 702 and 703 of the Act, including projects authorized by Title VII E.

(b) The State plan shall provide at least two closing dates during a Federal fiscal year for each category of institution under § 617.11.

(c) All closing dates established in the State plan shall be between October 31 and May 15.

(d) If the Secretary permits, after determining the presence of unusual circumstances—

(1) (i) The State commission may waive a closing date if the commission gives reasonable prior notice of waiver to the institutions that may be affected by that date.

(ii) In that case an applicant may file an application before the next closing date established by the State commission for that fiscal year;

(2) The State plan may provide for a closing date after May 15; or

(3) Both paragraphs (d)(1) and (d)(2) of this section.

(20 U.S.C. 1132a-3)

§ 617.17 Submission of application to State commission.

(a) An applicant shall submit directly to its State commission—

(1) Its application; and

(2) Any supplemental information the commission may require.

(b) The commission shall officially record the date of receipt of the application.

(c) An applicant may not invite bids for construction, reconstruction or renovation under the project before submitting its initial application to the commission.

(d) (1) However, paragraph (c) of this section does not apply if an agency of the United States has already approved assistance for the project under Title VII or some other Federal construction program.

(2) In that case the commission shall consider the application at only those closing dates that occur no later than 12 months after the applicant has begun the construction, reconstruction, or renovation.

(20 U.S.C. 1132a-6(a)(2)(C))

§ 617.18 Verification of application data and institutional and project eligibility.

(a) Before determining the relative priority or Federal share for any application under Title VII A, the State commission shall determine that—

(1) The data in the application are valid; and

(2) The institution and the project meet basic eligibility requirements of the Act and the regulations governing the administration of the Act.

(b) (1) If, in the opinion of the commission, the eligibility of an institution is questionable, the commission shall promptly forward a copy of the application to the Secretary for a clarification of that eligibility.

(2) In that case the commission shall—

(i) Continue to process and rank the application as if that application were eligible; and

(ii) Delay final action on that application until the Secretary notifies the commission regarding the applicant's eligibility.

(20 U.S.C. 1132a-6(a)(2)(C))

§ 617.19 Determination of relative priorities and Federal shares.

A State commission shall—

(a) Consider each eligible application received by each specified closing date together with all other applications in the same category of eligible applicants (§ 617.11); and

(b) Assign to that application, in accordance with the provisions of the State plan, its—

(1) Relative priority; and

(2) Recommended Federal share.

(20 U.S.C. 1132a-6(a)(2)(D) and (E))

§ 617.20 Procedures if funds are insufficient.

(a) (1) If, under a State's allotment, funds are insufficient to cover all eligible applications that the State commission considers in a particular category as of a particular closing date, the commission shall follow the procedures in paragraph (a)(2) of this section.

(2) The commission shall determine—according to the State plan—the full Federal share for each project, in order of relative priority, until the remaining funds are insufficient to provide the full Federal share for the next project in order of priority.

(b) (1) The State plan may provide for apportionment of the State's allotment among closing dates during the same fiscal year.

(2) In that case the plan may also provide for the commission to make available immediately—from funds apportioned to later closing dates, if any, in the same fiscal year—funds sufficient to provide a full Federal share, as initially calculated, for the first project for which only part of the Federal share would otherwise have been available.

(c) If the State plan contains the provisions described in both paragraphs (b)(1) and (b)(2) of this section, the commission shall—

(1) Make available immediately funds sufficient to provide a full Federal share, as initially calculated, for the first project for which only part of the Federal share would otherwise have been available; and

(2) Carry over to any subsequent closing dates in the same fiscal year all other eligible but unfunded applications in that category without requiring the applicants to submit new applications for those projects for that fiscal year.

(d) If the State plan contains the provision described in paragraph (b)(1) of this section but does not contain the provision described in paragraph (b)(2) of this section, the commission—

(1) Shall carry over to any subsequent closing dates in the same fiscal year all eligible applications for which a full Federal share is not available; and

(2) Is prohibited from requiring those applicants to submit new applications for those projects for the same fiscal year.

(e) (1) If the State plan does not apportion the State's allotment among closing dates or if the closing date is the last closing date in a fiscal year, the commission shall offer the remaining Federal funds as a partial Federal share for the first project—in order of relative priority—for which less than the full Federal share, as calculated, is available.

(2) The commission or the applicant may not regard the offer and acceptance of a lesser Federal share as diminishing the scope of the project for which the partial share is accepted.

(3) The commission shall give the applicant that agrees to accept a partial Federal share the option to submit a supplemental application, as provided in § 617.27.

(4) If an applicant declines to accept the commission's offer of a partial Federal share, the commission shall carry over to the next closing date, if any, in the same fiscal year—

(i) The remaining funds; and

(ii) The application for which an applicant declined the partial Federal share.

(20 U.S.C. 1132a-5(b))

§ 617.21 Recommendations by State commission.

On completing its consideration of applications for each closing date, but no later than 45 days after each closing date, a State commission shall forward the following to the Secretary:

(a) A current application summary report, in a form prescribed by the Secretary, for each category of applicants. The commission shall list in its report—

(1) Each application received for that closing date, including those carried over from the previous closing date;

(2) Each application returned to an applicant and the reason for the return of that application; and

(3) The priority and Federal share—determined according to the State plan—for each project recommended for Federal assistance.

(20 U.S.C. 1132a-3(a)(6))

(b) For each project to which the commission has assigned a priority high enough to enable that project to qualify for a Federal grant within the amount of funds available in the allotment for the State, the application form and exhibits in the number of copies the Secretary requests.

(20 U.S.C. 1132a-3(a)(4)(B))

§ 617.22 Notification to applicants.

A State commission shall—

(a) Promptly notify an applicant of the results of all determinations regarding its application as of each closing date; and

(b) On request and according to procedures that the commission has established, give an applicant access to the records of official proceedings on the basis of which the commission determined relative priorities and Federal shares of all applications.

(20 U.S.C. 1132a-3(a)(2), (4), and (5))

§ 617.23 Disposition of applications not recommended for grants.

(a) A State commission shall notify unsuccessful applicants when funds are no longer available in the State allotments for that fiscal year.

(b) The commission may retain an application that it does not recommend for a grant within the fiscal year in which the applicant filed that application.

(c) The commission may reconsider for the following fiscal year an application that it has not recommended for a grant if the applicant requests the commission, in writing, to reconsider its application in that subsequent year.

(d) If the commission carries over an application from one closing date to the next, the applicant shall amend those portions of the application requiring data on enrollments and available instructional and library or health care facilities or both—as appropriate—to reflect most recent opening fall term data.

(20 U.S.C. 1132a-6(a)(1))

§ 617.24 Grant award.

For a project application that meets all eligibility requirements for an award of funds under Title VII A and has been recommended by the State commission, the Secretary—

(a) Approves the application;

(b) Reserves Federal funds from the appropriate State allotment; and

(c) Prepares and sends to the applicant a grant award that contains the pertinent terms and conditions of the grant.

(20 U.S.C. 1132a-6(a) and (c))

§ 617.25 Amendments.

(a) Any time prior to a closing date for which an applicant asks its State commission to consider its application, the applicant may make changes in the application by informing the commission, in writing, of those changes.

(b) After the closing date the commission may not permit changes in the application except for corrections or the submission of additional data the commission requests.

(20 U.S.C. 1132a-6(a)(1))

§ 617.26 Project changes.

After a State commission has forwarded a recommended project to the Secretary, the Secretary does not approve any substantial changes in the nature or scope of the project until the Secretary determines that those changes would not have affected the commission's original recommendation of the project for a grant.

(20 U.S.C. 1132a-6(a)(2)(C))

§ 617.27 Supplemental applications.

(a) If an applicant has received approval of a Title VII A grant but has not received the maximum Federal share allowable under the Act or the applicable State plan, the applicant may file a supplemental application.

(b) A supplemental application—

(1) Must be in the form of a written request to the State commission; and

(2) Must contain all amended application data necessary to enable the commission to assign a priority to the application and to calculate a revised eligible development cost of the project, if applicable.

(c) However, the commission may not consider a supplemental application for—

(1) A closing date that is more than 12 months after the applicant has started construction, reconstruction, or renovation; or

(2) A closing date that is after the date the applicant has substantially completed the project.

(20 U.S.C. 1132a-6(b))

§ 617.28 Standards for determining Federal share of eligible projects.

(a) A State plan must—

(1) Specify as a uniform percentage the Federal share of the costs eligible for Federal financial assistance; or

(2) Prescribe the standards or methods by which the State commission determines the Federal share of the costs.

(b) The Federal share of project costs may not exceed the percentage of the eligible development cost as specified in section 706(b)(2) of the Act.

(c) Standards and methods for determining the Federal share of eligible costs must—

(1) Be objective and simple to apply;

(2) Be based on the data that applicants are required to include in their applications; and

(3) Be consistent with the standards in the State plan for determining relative priorities.

(20 U.S.C. 1132a-5(b))

(d) For projects for the removal of architectural barriers authorized under Title VII E, the Federal share may—

(1) Not exceed 50 percent of the eligible project cost if the applicant qualified for assistance on the basis of "financial hardship"; or

(2) Not exceed 25 percent of the eligible project cost if the applicant qualified for assistance on the basis of "high absolute cost."

(20 U.S.C. 1132a-5(b)(2); 1132d-11(a)(2)(A))

§ 617.29 Adjustments in the amount of Federal share.

(a) If the Secretary finds that the costs eligible for Federal assistance in a project are less than those provided for in the grant award, the Secretary redetermines the amount of the Federal share.

(b) The Secretary bases the amount of the revised grant on—

(1) The lesser eligible costs, using the State plan provisions that were in effect at the time the State commission recommended the project for a grant; and

(2) The assumption that sufficient funds were available in the State allotment at that time to provide the maximum Federal share.

(c) (1) If the Secretary finds that the redetermined share is less than the maximum amount authorized by the grant, the Secretary reduces the grant accordingly.

(2) If the Secretary finds that there has been an overpayment of Federal funds, the grantee shall immediately remit that overpayment to the Secretary.

(3) If the Secretary finds that the redetermined Federal share is equal to or greater than the maximum amount authorized by the grant, the amount of the grant shall be the Federal share.

(20 U.S.C. 1132a-6(c))

Subpart C—Grants for Construction, Reconstruction, or Renovation of Graduate Academic Facilities Under Title VII B of the Act

§ 617.41 Purpose and eligibility.

(a) This subpart governs grants from funds available under Title VII B of the Act.

(b) (1) The Secretary awards grants for the construction, reconstruction, or renovation of academic facilities dedicated to the provision of graduate education—including facilities essential to their operations—except for projects related to Title VII E (as described in section 771(a) (1) and (2) of the Act).

(2) Those eligible for grants under this paragraph are—

(i) Institutions of higher education; and

(ii) Cooperative graduate center boards (as defined in section 782(8) of the Act).

(20 U.S.C. 1132b(a)(1))

(c) (1) The Secretary awards grants or enters into contracts for the construction of facilities for model intercultural programs designed to integrate the educational requirements of substantive knowledge and language proficiency.

(2) Those eligible for grants under paragraph (c)(1) of this section are institutions of higher education.

(20 U.S.C. 1132b(a)(2))

§ 617.42 Submission of application.

(a) An applicant shall submit its application in accordance with section 722(a)(1) of the Act at the time, in the manner, and containing the information that the Secretary specifies.

(b) The applicant may not invite bids under the project before submitting its application to the Secretary.

(20 U.S.C. 1132b-1 (a) and (b))

§ 617.43 Facilities panel.

(a) The Secretary approves an application for a grant for construction, reconstruction, or renovation of graduate facilities only after obtaining the advice and recommendations of a panel of specialists who are not employees of the Federal Government and who are competent to evaluate the application.

(b) The panel—referred to in § 617.44 as facilities panel—

(1) Reviews the application in terms of the criteria in § 617.44; and

(2) Makes a recommendation to the Secretary for the approval or disapproval—in whole or in part—of the application.

(20 U.S.C. 1132b-1(b))

§ 617.44 Criteria for evaluating applications.

In determining relative priorities for recommending applications for grants for construction, reconstruction, or renovation of graduate facilities, a facilities panel takes into consideration at least the following unweighted factors:

(a) The extent to which the program(s) to be assisted by the proposed project are likely to contribute to—

(1) The establishment or development of a graduate school or cooperative graduate center of excellence; or

(2) The improvement of an existing graduate school or cooperative graduate center.

(b) The extent to which the proposed project is likely to increase the capacity of the applicant to supply highly qualified personnel critically needed by the community, industry, and government and for research and teaching.

(c) The extent to which the proposed project will assist in attaining a wider distribution throughout the United States of graduate schools and cooperative graduate centers.

(d) The capability of the applicant to give full financial support to its graduate program in general and specifically to the program(s) of graduate education that the proposed project would assist.

(e) The extent to which the program(s) that the proposed project would assist are likely to draw to the institution both graduate students and faculty of a high level of competence.

(f) The adequacy of—

(1) The applicant's existing academic facilities with respect to the present demands made on them and the demands that can reasonably be expected to be made on them in the foreseeable future; and

(2) Particularly those facilities, if any, available to conduct the program(s) that the proposed project would assist.

(g) The extent to which the proposed project is likely to contribute significantly to the quantity or quality, or both, of graduate education in a relatively wide geographic area.

(20 U.S.C. 1132b-1(a))

Subpart D—Loans for Construction, Reconstruction, or Renovation of Academic Facilities Under Title VII C of the Act

§ 617.51 Purpose and eligibility.

(a) The Secretary makes loans—under Title VII C of the Act—for the construction, reconstruction, or renovation of academic facilities.

(b) Those eligible for loans are—

(1) Institutions of higher education; and

(2) Higher education building agencies.

(c) No loan exceeds $5 million per campus for a Federal fiscal year.

(20 U.S.C. 1132c(a)(2), 1132d-11(a))

§ 617.52 Submission of applications.

(a) An applicant for a loan shall submit its application at the time, in the manner, and containing the information that the Secretary specifies.

(b) The applicant may not invite bids under the project before submitting its application to the Secretary.

(c) (1) The applicant shall send a copy of its application to the State commission before submitting it to the Secretary.

(2) The commission shall review and evaluate the application and provide comments to the Secretary regarding—

(i) Use of space;

(ii) Enrollment data; and

(iii) The overall need for the facility—or for the reconstruction or renovation of facilities—for which the applicant has requested assistance.

(3) Following its review, the commission shall furnish its evaluation to the applicant.

(4) If the applicant does not agree with the evaluation, the applicant may include with its application to the Secretary a statement supporting its position.

(d) The commission shall submit the application to the Secretary together with all State clearinghouse comments required by OMB Circular A-95.

(e) If the State commission is not the agency serving as the State postsecondary education commission authorized under section 1202(a) of the Act, the State commission shall afford the latter the opportunity to review and evaluate an application filed under Title VII C.

(20 U.S.C. 1132c(a)(2), 1132d-11(a), 1142a)

§ 617.53 Special terms and conditions.

Before approving a loan the Secretary requires the following evidence and assurances:

(a) Satisfactory evidence that the applicant has or will have a full title or interest in the site, including right of access, that is sufficient to insure the applicant's undisturbed use and possession of the facilities for not less than the useful life of the facilities or 50 years, whichever is longer.

(b) Satisfactory evidence that the applicant is able to comply with the appropriate terms and conditions for repayment of the loan.

(c) Satisfactory evidence that the applicant has the necessary legal authority to—

(1) Finance; construct, reconstruct, or renovate; and maintain the proposed facilities;

(2) Apply for and receive the proposed loan; and

(3) Pledge or mortgage any assets or revenues to be given as security for the proposed loan.

(d) (1) Satisfactory assurances that the project—

(i) Is related to a plan for development of the applicant institution, branch campus, or higher education building agency; and

(ii) Is associated with—

(A) A planned increase in student enrollment; or

(B) A planned improvement in the instructional programs offered by the applicant.

(2) However, with respect to reconstruction and renovation projects authorized under Title VII E, the Secretary does not require the assurances specified in paragraph (d)(1) of this section.

(e) (1) Satisfactory assurance that the applicant will not, without the consent of the Secretary, mortgage to others during the life of the loan the facility constructed, reconstructed, or renovated with the aid of the loan.

(2) However, a borrower does not require the Secretary's consent to mortgage facilities reconstructed or renovated under Title VII E unless the Secretary has a mortgage on the facilities as securitiy for a loan under this subpart.

(20 U.S.C. 1132c-2(b)(1))

(f) (1) Satisfactory assurance that the applicant will finance not less than 20 percent of the development cost of the facility from non-Federal sources.

(2) However, the Secretary waives this assurance for an institution that has qualified as a developing institution under Title III of the Act.

(20 U.S.C. 1055(b), 1132c-1(a), 1132d-11)

§ 617.54 Determination of non-availability of equally-as-favorable terms and conditions.

(a) The Secretary considers making a loan only if the Secretary finds that the applicant is unable to secure from other sources a loan with terms and conditions equally as favorable as the terms and conditions applicable to loans under this part.

(b) In order to assist the Secretary in making this determination, the applicant shall comply with any procedures the Secretary may establish, including public advertising for bids.

(20 U.S.C. 1132c-1(a)(2), 1132d-11(a))

§ 617.55 Forms of evidence of indebtedness.

An applicant shall furnish to the Secretary evidence of indebtedness in the form the Secretary prescribes in the loan agreement and in the terms and conditions of the loan agreement.

(20 U.S.C. 1132c-2(b), 1132d-11(a))

§ 617.56 Security for loans.

(a) Except as provided in paragraph (b) of this section, an applicant shall secure a loan in a manner the Secretary finds will reasonably assure repayment. The security may be one or a combination of the following:

(1) A first mortgage on the facilities and site of those facilities.

(2) Negotiable stocks or bonds of a quality and value acceptable to the Secretary.

(3) A pledge of unrestricted and unencumbered income from an endowment or other trust fund acceptable to the Secretary.

(4) A pledge of a specified portion of the applicant's annual general or special revenues acceptable to the Secretary.

(5) General obligations to the applicant by a State or local public body.

(6) Other types of security the Secretary may find acceptable in specific instances.

(20 U.S.C. 1132c-1(b))

(b) However, the Secretary may make an unsecured loan, on a reconstruction or renovation project authorized under Title VII E, if the loan is for no more than seven years.

(20 U.S.C. 1132d-11(c))

§ 617.57 Length and maturity of loans.

(a) The maximum repayment period for a loan—

(1) Under Title VII C shall be 30 years, unless the Secretary finds that a longer repayment period is required; and

(20 U.S.C. 1132c-1(b))

(2) Under Title VII E, shall be 20 years.

(20 U.S.C. 1132d-11(c))

(b) In no case, however, may a loan repayment period exceed the estimated useful life of the facilities to be constructed, reconstructed, or renovated with the aid of the loan.

(c) Unless the Secretary authorizes otherwise, the borrower shall make repayment in substantially level total annual installments of principal and interest.

(d) The Secretary may approve a loan that does not mature serially if that type of loan is necessary to be compatible with an applicant's total financial planning.

(20 U.S.C. 1132c-2(b)(1))

§ 617.58 Opinion of bond counsel.

(a) At appropriate stages in a loan application and development procedure, an applicant shall submit—or arrange to have submitted—to the Secretary opinions of bond counsel—or of legal counsel, as provided in paragraph (d) of this section—with respect to—

(1) The legality of the proposed bond or note issue;

(2) The legal authority of the applicant to offer the issue and secure it by the proposed collateral; and

(3) The legality of the issue on delivery.

(b) As used in this section, "bond counsel" means a law firm or individual lawyer—

(1) Who is thoroughly experienced in the financing of construction, reconstruction, or renovation projects by the issuance of bonds;

(2) Whose approving opinions have previously been accepted by purchasers of bonds offered at public sales; and

(3) Who, if the borrower is a public institution or agency, is a recognized bond counsel in the municipal field.

(c) In each case the counsel shall present the following:

(1) A memorandum by the counsel, submitted with the loan application—

(i) Stating that the applicant has or will have authority to—

(A) Finance, construct, and maintain the project;

(B) Issue the proposed obligations; and

(C) Pledge or mortgage the assets or revenues that the applicant is offering to secure the loan; and

(ii) Citing the basis for the authority referred to in paragraph (c)(1)(i) of this section.

(2) A preliminary approving opinion of the counsel—submitted at the time the applicant proposes to advertise for bids for construction, reconstruction, or renovation—to the effect that when the bonds or notes described in the loan agreement are sold and delivered, they will—

(i) Comply with the applicable provisions of the loan agreement; and

(ii) Be valid and binding obligations of the issuer payable in accordance with their terms.

(3) A final approving opinion of the counsel—delivered at the same time as the delivery of the bonds or notes—stating that the bonds or notes—

(i) Are those described in the loan agreement and the authorizing proceedings;

(ii) Have been duly authorized, sold, and delivered to the Secretary; and

(iii) Consititute the valid and binding obligations of the issuer payable in accordance with their terms.

(d) (1) The Secretary may accept the opinion of legal counsel, other than a bond counsel as defined in paragraph (b) of this section, after considering such factors as—

(i) The amount, term, and security for the loan; and

(ii) The legal or financial complexity of the transaction.

(2) As used in paragraph (d)(1) of this section, "legal counsel" means a law firm or individual lawyer—

(i) Having experience in the financing of construction, reconstruction, or renovation projects; and

(ii) Whose opinions with regard to that type of financing have been previously accepted by responsible lenders or lending institutions.

(20 U.S.C. 1132c-2(b)(1), 1132d-11(a))

§ 617.59 Determination of priorities for loan approvals.

(a) (1) The Secretary processes loan applications in the order and according to the standards and methods that the Secretary determines.

(2) The Secretary—

(i) Develops these standards and methods as may be necessary and appropriate to encourage distribution of the available loan funds according to actual needs; and

(ii) May—through a notice published in the FEDERAL REGISTER—establish closing dates and priorities for applications.

(b) The Secretary may—through notice in the FEDERAL REGISTER—give priority consideration to—

(1) Applications from developing institutions (as defined in § 617.1); or

(2) The degree of efficiency with which the applicant is using its present facilities; or

(3) Both.

(c) The Secretary does not approve a loan application for a reconstruction or renovation project authorized under Title VII E unless the application meets the conditions specified in paragraphs (a) and (c) of § 617.8.

(20 U.S.C. 1132c-2(b), 1132d-11(a))

§ 617.60 Loan agreement.

(a) The Secretary prepares and sends a loan offer to an applicant if—

(1) The application meets all requirements of the Act and the regulations governing administration of the Act; and

(2) The Secretary approves the project and reserves funds for it.

(b) The loan offer—

(1) Contains the terms and conditions for the loan; and

(2) Is conditioned on the fulfillment of these terms and conditions.

(c) The accepted loan offer constitutes the loan agreement between the Secretary and the applicant for the partial financing of the construction, reconstruction, or renovation of the approved project.

(20 U.S.C. 1132c-2(b), 1132d-11(a))

§ 617.61 Loan closing.

Loan closing occurs at the time determined by the Secretary.

(20 U.S.C. 1132c-2(b), 1132d-11(a))

§ 617.62 Interim financing.

(a) If necessary, an applicant shall arrange for interim financing, subject to the approval of the Secretary, to cover the cost of construction, reconstruction, or renovation pending the loan closing.

(b) If the Secretary finds that the applicant is unable to secure necessary interim financing on reasonable terms, the Secretary may provide for advances against the approved loan.

(20 U.S.C. 1132c-2(b), 1132d-11(a))

§ 617.63 Construction fund.

(a) (1) A borrower shall deposit in a separate bank account—

(i) The proceeds of the sale of the bonds or notes;

(ii) Any interim advances against the approved loans; and

(iii) All other money that the borrower will use in paying for the construction, reconstruction, or renovation of the approved project.

(2) The separate account shall be known as the construction fund.

(3) The borrower shall keep this account in a bank of its choice.

(4) The borrower shall make all expenditures for the construction, reconstruction, or renovation from this fund.

(5) Accounting for this fund shall be in accordance with generally accepted accounting principles.

(b) (1) If necessary and appropriate, the Secretary may approve other arrangements for—

(i) The deposit of construction funds; and

(ii) The accounting for those funds.

(2) Those other arrangements must provide adequate accountability for the total construction, reconstruction, or renovation receipts and expenditures.

(20 U.S.C. 1132c-2(b), 1132d-11(a))

§ 617.64 Investment of idle construction funds.

(a) If the money on deposit in the construction fund exceeds the estimated disbursements for the project for the next 90 days, the Secretary encourages the borrower—if permitted by State or local law—to invest those excess funds.

(b) If the borrower chooses to invest the funds referred to in paragraph (a) of this section, the borrower—unless otherwise prohibited by State or local law—shall invest those funds in—

(1) Direct obligations of the U.S. Government; or

(2) Obligations whose principal and interest are guaranteed by the U.S. Government.

(c) An investment made in accordance with paragraph (b) of this section shall be in obligations that will mature not later than 18 months from the date of the investment.

(20 U.S.C. 1132c-2(b), 1132d-11(a))

§ 617.65 Disposal of balance remaining in the construction fund.

Upon full settlement with all contractors, suppliers, and the other parties to whom it has incurred obligations under the project, the borrower shall dispose of any money remaining in the construction fund in accordance with the provisions of the loan agreement.

(20 U.S.C. 1132c-2(b), 1132d-11(a))

§ 617.66 Moratorium on principal or interest payments on loans.

The Secretary may approve a moratorium on the repayment of principal and interest installments on a loan if the borrower—

(a) Can demonstrate a temporary inability to make those payments without undue financial hardship; and

(b) Furnishes, in a plan acceptable to the Secretary, a specific schedule for repayment of the amounts in arrears. However, the Secretary may permit the borrower to defer submission of the plan if the borrower—

(1) Clearly demonstrates that it cannot reasonably project a specific repayment schedule due to circumstances beyond its control; and

(2) Satisfactorily assures the Secretary that it will develop a schedule for consideration at a future date that the Secretary designates.

(20 U.S.C. 1132c-2(b)(5)(A))

Subpart E—Annual Interest Grants for Construction, Reconstruction, or Renovation of Academic Facilities Under Section 745 of Title VII C of the Act

§ 617.71 Purpose and eligibility.

(a) The Secretary may make annual interest grants to reduce the cost of borrowing funds, other than those available under this part, for the construction, reconstruction, or renovation of academic facilities.

(b) Those eligible to apply for annual interest grants are—

(1) Institutions of higher education; and

(2) Higher education building agencies.

(20 U.S.C. 1132c-4)

(b-1)(1) The Secretary considers making an annual interest grant only if the applicant is unable to secure from other sources a loan—up to the amount the Secretary may subsidize under the law—with an interst rate equally as favorable as the rate applicable to direct Federal loans under Title VII C of the Act.

(2) In order to assist the Secretary in making this determination, the applicant shall comply with any procedures the Secretary may establish, including public advertising for bids.

(20 U.S.C. 1132c-4(e)(2))

(c) The Secretary does not make an annual interest grant for a loan if—

(1) A borrower is legally obligated under that loan before it has filed an application under this subpart; or

(2) The loan covers a construction, reconstruction, or renovation activity that the borrower began more than 12 months before the closing date for which it requests an interest grant.

(20 U.S.C. 1132c-4)

§ 617.72 Amount of annual interest grants.

(a) Each interest grant that the Secretary makes is approximately equal to, but not more than, the difference between—

(1) The average annual debt service that the borrower is required to pay on the amount borrowed from private sources for the project covered by the application; and

(2) An average annual debt service on the same amount at an interest rate of three percent.

(b) The Secretary may amend the amount of the annual interest grant stipulated in the agreement to reflects changes in the amount or terms of the loan.

(c) (1) If the borrower increases its loan, it may request of the Secretary an increase in the amount of its annual interest grant.

(2) The borrower must make this request—

(i) Not later than 12 months after it has begun construction, reconstruction, or renovation; and

(ii) By submitting to the Secretary an amended application.

(3) The Secretary considers the request, subject to the ranking system applicable at the time the borrower submits the request.

(d) (1) If, at the time the borrower becomes legally obligated under a loan, there has been a change in the rate of interest or the terms of the loan, the borrower may request of the Secretary an increase in the amount of its annual interest grant.

(2) The Secretary considers the request apart from the ranking system.

(20 U.S.C. 1132c-4(b))

§ 617.73 Submission of applications.

(a) An applicant for annual interest grants shall submit its application at the time, in the manner, and containing the information that the Secretary specifies.

(b) The applicant may not invite bids under the project before submitting its application to the Secretary.

(c) (1) The applicant shall send a copy of its application to the State commission before submitting it to the Secretary.

(2) The commission shall review and evaluate the application and provide comments to the Secretary regarding—

(i) Use of space;

(ii) Enrollment data; and

(iii) The overall need for the facility—or for the reconstruction or renovation of the facility—for which the applicant has requested assistance.

(3) Following its review, the commission shall furnish its evaluation to the applicant.

(4) If the applicant does not agree with the evaluation, the applicant may include with its application to the Secretary a statement supporting its position.

(d) The commission shall submit the application to the Secretary together with all State clearinghouse comments required by OMB Circular A-95.

(e) If the State commission is not the agency serving as the State postsecondary education commission authorized under Section 1202(a) of the Act, the State commission shall afford the latter the opportunity to review and evaluate an application filed under Section 745 of the Act.

(20 U.S.C. 1132c-4, 1142a)

§ 617.74 Conditions for approval of annual interest grants.

The Secretary approves an application for annual interest grants only if the Secretary is satisfied that—

(a) The facilities the applicant proposes to construct, reconstruct, or renovate are urgently needed—

(1) To accommodate more students; or

(2) To replace inadequate facilities in order to prevent a decrease in student enrollment capacity;

(b) The applicant will have available, as required, funds to pay the total development cost of the facilities;

(c) The applicant has or will have a full title or interest in the site, including right of access, that is sufficient to insure the applicant's undisturbed use and possession of the facilities for not less than the useful life of the facilities or 50 years, whichever is longer.

(d) The applicant has the necessary legal authority to—

(1) Finance; construct, reconstruct, or renovate; and maintain the proposed facilities;

(2) Apply for and receive the proposed loan and annual interest grants; and

(3) Pledge or mortgage any assets or revenues to be given as security for the proposed loan; and

(e) The applicant's financing plan meets the conditions of § 617.76 and is otherwise practicable and feasible.

(20 U.S.C. 1132c-4)

§ 617.75 Limits of Federal assistance.

(a) The principal amount of a loan—or portion of a loan—on which the Secretary approves an annual interest grant, together with the amount of any other Federal financial assistance the applicant has obtained or is assured of obtaining under any other Federal program, may not exceed 90 percent of the eligible development cost.

(b) The aggregate principal amount of loans—or portions of loans—on which the Secretary approves annual interest grants does not exceed $5 million per campus for a Federal fiscal year.

(20 U.S.C. 1132c-4)

§ 617.76 Approval of financing plans.

(a) Except as provided in paragraph (b) of this section, in order to be acceptable to the Secretary, a financing plan submitted under § 617.73 must—

(1) Provide that the term of the loan for which the applicant requests an annual interest grant does not exceed the lesser of—

(i) Thirty years; or

(ii) The useful life of the facilities that the applicant proposes to construct, reconstruct, or renovate with the help of the loan;

(2) Provide that the borrower is to repay the loan in substantially level annual installments of interest and principal over the term of the loan, except that the borrower may pay interest only for an initial period not exceeding five years; and

(3) Contain other provisions that will assure the Secretary that the support provided by the Secretary over the term of the loan is no more than is necessary to carry out the purposes of this subpart.

(b) (1) If the Secretary finds that unusual circumstances warrant an exception, the Secretary may accept a financing plan related to a loan for which—

(i) The term is longer than 30 years;

(ii) The annual installments of interest and principal are not substantially level; or

(iii) Both.

(2) However, the term of a loan otherwise eligible for assistance under this subpart may not exceed 40 years.

(20 U.S.C. 1132c-4)

§ 617.77 Evidence of lowest possible cost of loan.

(a) An applicant shall demonstrate to the satisfaction of the Secretary that the loan it proposes to obtain is at the lowest possible net interest cost.

(b) (1) In the case of an applicant proposing to issue tax-exempt bonds to finance the construction, reconstruction, or renovation of academic facilities, the Secretary considers the applicant to meet the requirement in paragraph (a) of this section if the applicant proposes to sell those securities after publicly advertising for bids for the securities in an advertising medium acceptable to the Secretary.

(2) Before advertising these bonds for sale, the applicant shall submit for the Secretary's approval—

(i) A draft of the notice of sale; and

(ii) A statement of essential facts concerning the sale.

(c) (1) An applicant proposing to issue securities that are not tax-exempt shall submit to the Secretary offers from at least three lending institutions normally engaged in making long-term construction, reconstruction, or renovation loans.

(2) The applicant shall have given each of those institutions the information necessary to enable it to specify in its offer the—

(i) Amount of the loan;

(ii) Interest rate;

(iii) Maturity period;

(iv) Security provisions; and

(v) Prepayment provisions.

(d) The applicant—whether proposing to issue tax-exempt bonds or proposing to issue securities that are not tax-exempt—may not enter into a firm and binding agreement with a lender before the Secretary has approved the loan offer.

(20 U.S.C. 1132c-4)

§ 617.78 Annual interest grant agreement.

(a) (1) After approving an application for annual interest grants, the Secretary prepares and sends to the applicant a proposed agreement containing the terms and conditions of those grants.

(2) The Secretary enters into this agreement for the benefit of the applicant institution only.

(b) The proposed agreement provides that if the applicant does not become legally obligated under the loan before the Secretary puts the agreement into effect, the Secretary does not make any grant under the agreement unless the Secretary concurs in the rate of interest and other terms and conditions of the loan.

(c) (1) The applicant may not enter into the agreement—

(i) For the benefit of third parties; or

(ii) To induce—

(A) The making of loans by third parties; or

(B) The sale of bonds to third parties.

(2) The Secretary does not entertain grievances or claims of third parties with respect to the agreement between the Secretary and applicant institution.

(20 U.S.C. 1132c-4)

§ 617.79 Payment of annual interest grants.

(a) The Secretary makes payments under an annual interest grant agreement once a year.

(b) The date of payment coincides as closely as possible with—

(1) The anniversary date of the loan or;

(2) The date when debt service requirement related to the loan is greatest.

(c) The payment date remains fixed for the duration of the loan.

(d) The Secretary pays annual interest grants—

(1) Directly to the grantee; or

(2) To a trustee, paying agent, or lender to whom the grantee assigns the payments with the permission of the Secretary.

(20 U.S.C. 1132c-4)

§ 617.80 Reduction of grant if refinancing produces lower costs.

If the Secretary finds that a grantee could have accelerated repayment of an outstanding loan or obtained a new loan that would have resulted in a net savings in the cost of the loan, the Secretary may recompute the amount of the annual interest grant as though the grantee had undertaken that refinancing.

(20 U.S.C. 1132c-4)

§ 617.81 Application closing dates.

The Secretary may—through a notice published in the FEDERAL REGISTER—establish closing dates for applications for annual interest grants.

(20 U.S.C. 1132c-4)

§ 617.82 Preceding provisions not exhaustive of authority of the Secretary.

The provisions of this subpart do not exhaust the authority of the Secretary to impose, at any time the Secretary considers appropriate, additional limitations with regard to—

(a) The amount of an annual interest grant; or

(b) The amount on which that grant is based.

(20 U.S.C. 1132c-4)

PART 621—GRANTS TO LAND GRANT COLLEGES AND UNIVERSITIES

Subpart A

Sec.

621.1 Purposes for which grants are made.
621.2 Manner in which funds are channeled to the States.
621.3 Forms for reports from land-grant colleges and universities.
621.4 Withholding of grants.

AUTHORITY: 26 Stat. 417, as amended; 7 U.S.C. 321-329; sec. 204, Reorg. Plan No. 1 of 1939; 3 CFR, 1943 Cum. Supp., sec. 5, Reorg. Plan No. 1 of 1953; 3 CFR, 1953 Supp.

SOURCE: 11 FR 177A-545, Sept. 11, 1946, unless otherwise noted. Redesignated at 13 FR 8785, Dec. 30, 1948, and further redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A

§ 621.1 Purposes for which grants are made.

The Morrill, Nelson and Bankhead-Jones appropriations for the land-grant colleges and universities may be applied to instruction in agriculture, the mechanic arts, the English language and the various branches of mathematical, physical, natural, and economic science, with special reference to their applications in the industries of life, and to the facilities for such instruction, and a portion thereof may be used for providing courses for the special preparation of instructors for teaching the elements of agriculture and the mechanic arts.

§ 621.2 Manner in which funds are channeled to the States.

The Federal funds for the land-grant colleges and universities are channeled to the institutions as follows: From a study of the information contained in reports covering the preceding year from the presidents and treasurers of the land-grant colleges and universities together with further investigation if necessary, it is determined whether the several States and Territories are entitled to participate in the Federal appropriations. On or before July 1 each year the Secretary certifies to the Secretary of the Treasury as to each State and Territory whether it is entitled to receive its share of the annual appropriation for the land-grant colleges and universities, and the amount it is entitled to receive. On or before July 31 the Secretary of the Treasury pays to each State and Territory, to the State or Territorial treasurer, or to such officer as has been designated by the laws of the State or Territory to receive it, the amount it is entitled to receive. Immediately upon request of the appropriate officials of the land-grant colleges or universities the State or Territorial treasurers or other officers designated to receive the grants pay the money over to the treasurers of the land-grant institutions.

§ 621.3 Forms for reports from land-grant colleges and universities.

The following forms, prepared by the Department, are used by the presidents and treasurers of the land-grant colleges and universities for their annual reports to the office:

8-041 Part I Staff and Students for the Academic Year. Contains five schedules: A—Staff; B—Students; C—Enrollments and Degrees; D—Distribution of Degrees in Colleges of Arts and Sciences; E—Preparing for Teaching. 104 items. 4 pages.

8-041 Part II Financial Report for the Fiscal Year. Contains five schedules: A—Receipts Specifically Designated for Additions to Physical Plant and Additions to Endowments and to Other Nonexpendable Funds; B—General Income; C—Bond Issues and Other Borrowings; D—Expenditures by Function or Purposes; E—Fund and Plant Values. 58 items. 4 pages.

8-041 Part II Schedule G, Federal Funds. 15 items. 1 page.

8-041 Part III Land-Grant Fund, First Morrill Act of 1862. 19 items. 2 pages.

8-041 Part IV Supplementary Morrill Funds. 1 page. Itemized report of Receipts and Disbursements of Morrill, Nelson and Bankhead-Jones funds.

§ 621.4 Withholding of grants.

In the event that the Secretary withholds certification from a State or Territory of its share of the appropriation, he reports the facts and reasons therefor to the President of the United States and the amount involved is kept separate in the Treasury until the close of the next Congress, in order that the State or Territory may, if it should so desire, appeal to Congress from the determination of the Secretary. If the next Congress does not direct such sum to be paid, it is covered into the Treasury.

PART 624—INSTITUTIONAL AID PROGRAMS—GENERAL PROVISIONS

Subpart A—General

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624.2 Eligible applicants.
624.3 Waiver of five-year requirement.
624.4 Eligible grantees.
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Subpart G—What Compliance Procedures Does the Secretary Use?

624.60 Failure to maintain eligibility.

AUTHORITY: Title III of the Higher Education Act of 1965, as amended (20 U.S.C. 1051-1069c).

SOURCE: 47 FR 541, Jan. 5, 1982, unless otherwise noted.

Subpart A—General

§ 624.1 Institutional Aid Programs.

(a) The Institutional Aid Programs are designed to provide Federal funds for a limited period of time to assist eligible institutions of higher education to become self-sufficient by—

(1) Solving problems that threaten their ability to survive; and

(2) Stabilizing their management and fiscal operations.

(b) The Institutional Aid Programs consist of the following:

(1) The Strengthening Institutions Program (34 CFR Part 625), referred to in these regulations as the Strengthening Program.

(2) The Aid to Institutions with Special Needs Program (34 CFR Part 626), referred to in these regulations as the Special Needs Program.

(3) The Challenge Grant Program (34 CFR Part 627).

(20 U.S.C. 1051, 1057, 1060, and 1066)

§ 624.2 Eligible applicants.

(a) In order to apply for a grant under the Institutional Aid Programs, an institution of higher education or a branch campus must first be designated by the Secretary as an eligible institution.

(b) Before applying to the Secretary for designation as an eligible institution under § 624.20, the institution must satisfy basic eligibility requirements; that is, it must be an educational institution and—

(1) Admit as regular students persons who are—

(i) High school graduates;

(ii) The recognized equivalent of high school graduates; or

(iii) Beyond the age of compulsory school attendance in the State in which the institution is located and have the ability to benefit from the training offered by the institution;

(2) Be, and have been for five academic years preceding the academic year for which it seeks assistance, legally authorized in the State in which it is located to—

(i) Provide an educational program for which it awards a bachelor's degree; or

(ii) Be a junior or community college;

(3) Be, and have been for five academic years preceding the academic year for which it seeks assistance—

(i) Accredited by a nationally recognized accrediting agency or association; or

(ii) Making reasonable progress toward accreditation according to that accrediting agency or association; and

(4) Meet specific eligibility requirements for designation in 34 CFR 625.2, 626.2, or 627.2, as appropriate.

(c) If an institution changes its status from a junior or community college to an institution that awards bachelors' degrees or *vice versa*, it may satisfy the five-year requirements of paragraphs (b) (2) and (3) of this section by combining the periods of time it qualified as either type of institution.

(20 U.S.C. 1058, 1061, 1064, and 1141)

§ 624.3 Waiver of five-year requirement.

(a) At the request of an institution, the Secretary may waive for that institution all or part of the five-year requirements in paragraphs (b) (2) and (3) of § 624.2 if the Secretary determines that—

(1) The institution is located on an Indian reservation, or near an Indian reservation or a substantial population of Indians, and the waiver will substantially increase the higher educational opportunities appropriate to the needs of American Indians;

(2) The waiver will substantially increase higher educational opportunities for—

(i) Spanish-speaking people;

(ii) Individuals living in rural areas, whose needs are for the most part unserved by other institutions of higher education; or

(iii) Individuals whose income is below the poverty level established by the United States Bureau of the Census (low-income individuals); or

(3) The institution has traditionally served substantial numbers of black students.

(b)(1) For purposes of paragraph (a)(1) of this section generally the Secretary considers "near" to mean within 50 miles. However, the Secretary reserves the right to consider each distance between an institution and an Indian reservation on a case-by-case basis, according to reasons stated by the applicant in its request for a waiver; and

(2) For the purposes of paragraph (a)(2)(ii) of this section "rural area" means an area that is not included in a standard metropolitan statistical area as defined by the United States Bureau of the Census.

(c) An institution requesting a waiver under this section shall submit to the Secretary a written statement that includes sufficient information and explanations as to why the Secretary should grant the waiver.

(20 U.S.C. 1067)

§ 624.4 Eligible grantees.

The Secretary awards a grant under the Institutional Aid Programs to—

(a) An institution the Secretary has designated as eligible; or

(b) Under the Strengthening Program or the Special Needs Program, two or more eligible institutions under a cooperative arrangement.

(20 U.S.C. 1057, 1060, 1064 and 1069)

§ 624.5 Regulations that apply to the Institutional Aid Programs.

The following regulations apply to the Institutional Aid Programs:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (Definitions) except for 34 CFR 75.128(a)(2) and 75.129(a), in the case of applications under cooperative arrangements.

(b) The regulations in this Part 624.

(c) The regulations in 34 CFR Parts 625, 626, or 627, as applicable.

(20 U.S.C. 1221e-3(a)(1), 1057, 1060, 1064)

§ 624.6 Definitions that apply to the Institutional Aid Programs.

(a) The following terms used in this part are defined in EDGAR, 34 CFR Part 77:

Applicant
Application
EDGAR
Grant
Grant period
Grantee
Nonprofit
Private
Project
Public
Secretary
State

(b) The following definitions apply specifically to the Institutional Aid Programs:

"Academic year" means a period of time, generally eight or nine months, in which a full-time student is expected to complete—

(1) The equivalent of at least two semesters, two trimesters, or three quarters at an institution using credit hours; or

(2) At least 900 hours training for each program at an institution using clock hours.

"Activity" means a specific component of a project for which Federal funds are requested.

"Base year" means a 12-month period identified by the Secretary through a notice in the FEDERAL REGISTER.

"Branch campus."

(1) This term means, in a university or college, a unit that is—

(i) Independent of the main campus; and

(ii) Geographically apart from the main campus of the university or college.

(2) The Secretary considers a branch campus to be independent of the university's or college's main campus if the branch campus—

(i) Is separately accredited;

(ii) Is permanent in nature;

(iii) Offers courses for credit and programs leading to an associate or bachelor's degree;

(iv) Is autonomous to the extent that it has its own faculty and administrative or supervisory organization; and

(v) Has its own budgetary and hiring authority.

"Comparable institutions" and "institutions that offer similar instruction" mean institutions that are being compared with an applicant institution and that fall within one of the following four categories:

(1) Four-year public institutions.

(2) Four-year non-profit private institutions.

(3) Public junior or community colleges.

(4) Nonprofit private junior or community colleges.

"Cooperative arrangement" means an agreement between two or more eligible institutions that share and combine resources and otherwise cooperate in order to carry out the purpose of the Institutional Aid Programs more effectively and efficiently than if each institution were to conduct those activities separately.

"Educational and general (E&G) expenditures" means the total amount expended by an institution of higher education for—

(1) Instruction;

(2) Research;

(3) Public service;

(4) Academic support including library expenditures;

(5) Student services;

(6) Institutional support;

(7) Scholarships and fellowships;

(8) Operation expenditures, and maintenance expenditures for physical plant; and

(9) Any mandatory transfers that the institution is required to pay by law.

"Full-time-equivalent (FTE)."

(1) This term means the sum of—

(i) The number of full-time students; and

(ii) The full-time equivalent of the number of part-time students enrolled at the institution.

(2) The Secretary determines the full-time equivalent of the number of part-time students in paragraph (1)(ii) of this definition by any method that yields the equivalent of—

(i) Adding the number of credit hours taken by all part-time students; and

(ii) Dividing that number by 12.

"General operating and maintenance expenses" means those costs that are generally recurrent or continuing in nature, such as costs of operating remedial programs, costs of classroom teaching, and costs of maintaining programs after the development period.

"Junior or community college" means an institution of higher education that provides an educational program—

(1) For which it does not award a bachelor's degree; but

(2)(i) That is of not less than two years' duration and is acceptable for full credit toward a bachelor's degree; or

(ii) That is a two-year program in engineering, mathematics, or the physical or biological sciences, designed to prepare a student to work as a technician or at the semiprofessional level in engineering, scientific, or other technological fields requiring the understanding and application of basic engineering, scientific, or mathematical principles of knowledge.

"Non-renewable grant" means a one-time-only, broad-purpose development grant designed to enable an institution or group of institutions to achieve self-sufficiency by the end of the grant period.

"Pell Grant" (formerly Basic Educational Opportunity Grant) means the grant awarded under Title IV-A-1 of the Higher Education Act of 1965, as amended (20 U.S.C. 1070a).

"Renewable grant" means a narrow-purpose development grant, for which an institution or group of institutions may reapply, designed to help an institution or group of institutions move toward self-sufficiency.

"Self-sufficient" means the point at which, in the determination of the Secretary, an institution should be viable, thriving, and able to survive without continued funding Under the Institutional Aid Programs.

"Strengthening Developing Institutions Program (SDIP)" means the program authorized under Title III of the Higher Education Act of 1965 before October 1, 1981.

(20 U.S.C. 1058, 1059, 1061, 1062, 1066, and 1069)

Subpart B—What Kinds of Projects Does the Secretary Assist Under the Institutional Aid Programs?

§ 624.10 Types of grants.

The Secretary awards two principal types of grants under the Institutional Aid Programs:

(a) Planning grants, as described in § 624.11.

(b) Development grants, as described in § 624.12.

(20 U.S.C. 1057, 1059, 1060, 1062, and 1064)

§ 624.11 Planning grant.

(a) Unless otherwise provided, a planning grant may be used for a project to develop—

(1) A long-range comprehensive development plan (long-range plan), as described in § 624.22;

(2) An application for a development grant; or

(3) A long-range plan and an application for a development grant.

(b) The Secretary does not consider awarding a planning grant to an institution that is receiving or has received another grant—whether a planning or a development grant—under the Institutional Aid Programs.

(c) The Secretary does not consider awarding a planning grant to develop a long-range plan to a cooperative arrangement unless the purpose of the grant is to develop a separate long-range plan for each of the participating institutions.

(20 U.S.C. 1057, 1059, 1060, 1062, and 1069)

§ 624.12 Development grant.

A development grant may be used for a project to implement portions of an applicant's long-range plan to enable it to move toward or achieve self-sufficiency.

(20 U.S.C. 1057, 1060, and 1066)

§ 624.13 Allowable activities

(a) The Secretary awards grants under the Institutional Aid Programs to assist eligible institutions to plan, develop, or implement activities that the Secretary determines are likely to enable the institution to become self-sufficient.

(b) The following types of development activities are allowable:

(1) Development of faculty.

(2) Management of funds and administrative management.

(3) Development and improvement of academic programs.

(4) Acquisition of equipment for use in strengthening management of funds and in strengthening academic programs.

(5) Joint use of facilities such as libraries and laboratories.

(6) Student services.

(c) The Secretary does not fund an activity for which a grantee is receiving or has received a grant under—

(1) Any Institutional Aid Program; or

(2) The SDIP, if that grant is scheduled to expire after September 30, 1982.

(20 U.S.C. 1057, 1059, 1060, 1062, 1066 and 1221e-3)

Subpart C—How Does One Apply for a Grant?

§ 624.20 Designation as an eligible applicant.

(a)(1) An institution that wishes to be designated as an eligible institution for a particular Institutional Aid Program must file with the Secretary a request for designation for that program, according to the instructions contained in a notice published in the FEDERAL REGISTER.

(2) The Secretary annually publishes a notice in the FEDERAL REGISTER—

(i) Requesting applications for eligibility; and

(ii) Indicating the base year for calculating whether an institution satisfies the eligibility criteria under 34 CFR 625.2 and 626.2. The Secretary uses the most recent base year for which reliable data are available. If necessary, the Secretary may establish a separate base year for each of the three criteria described in 34 CFR 625.2 or 626.2 depending on data availability.

(b) An institution that receives a grant for a grant period lasting more than one year shall include in its annual application for a continuation award the assurance described in § 624.40(b).

(20 U.S.C. 1058, 1061, and 1064)

§ 624.21 How to apply for a grant.

(a) *General.* In an application for either a planning grant or a development grant, an applicant shall—

(1) Explain how the grant will assist the institution to prepare for the critical financial and other problems facing it in this decade;

(2) If it is requesting funding for more than one activity—

(i) Identify those activities that would be a sound investment of Federal funds if funded separately;

(ii) Identify those activities that would be a sound investment of Federal funds only if funded along with other activities in the application; and

(iii) Rank the activities in order of preferred funding;

(3) If it is applying for a grant from more than one program under the Institutional Aid Programs, rank the applications in order of preferred funding;

(4) Submit all budgetary information the Secretary may require, including a separate detailed budget for each activity;

(5) Identify the policies and procedures it will use to ensure that any Federal funds it receives as a result of the application will be used to supplement—and not supplant—funds that would otherwise be available to carry out its long-range plan;

(6) Identify the fiscal control and accounting procedures necessary for proper disbursement of and accounting for any Federal funds it receives as a result of the application; and

(7) Provide assurance to the Secretary that it will comply with the restrictions on the use of funds specified in § 624.42 (a) through (g).

(b) *Development grant.* In an application for a development grant, an applicant shall—

(1) Include its long-range plan containing all the elements required in § 624.22;

(2) Provide information that fully addresses each component of each selection criterion in § 624.33;

(3) Identify the institutional goals in its long-range plan that each proposed development activity will help achieve; and

(4) If it is requesting a multi-year grant, explain why—

(i) A multi-year grant of that length is necessary; and

(ii) A single year grant would be inadequate.

(c) *Planning grant.* In an application for a planning grant, an applicant shall provide information that fully addresses each component of each selection criterion in § 624.31.

(20 U.S.C. 1066, 1069b, and 1221e-3)

§ 624.22 Long-range plan.

(a) In its comprehensive long-range development plan (referred to in these regulations as the long-range plan), an institution shall describe its strategy for achieving self-sufficiency by strengthening its—

(1) Academic quality; and

(2) Institutional management.

(b) The long-range plan must include—

(1) The institutional mission statement (that is, a broad statement of fundamental purpose that includes the social and intellectual aspirations of the institution);

(2) Long-range and short-range institutional goals;

(3) Measurable objectives for each major unit of the institution;

(4) Time frames to achieve institutional goals and unit objectives;

(5) Major resource requirements; and

(6) Strategies for evaluating the institution's success in achieving all aspects of its long-range plan.

(20 U.S.C. 1066)

§ 624.23 Applications for grants under cooperative arrangements.

(a) *General.* To apply for a grant under the Strengthening Program or the Special Needs Program, the participating institutions in a cooperative arrangement shall submit a single, collective application that includes—

(1) The information required in 34 CFR 624.21; and

(2) The names of the institutions participating in the cooperative arrangement.

(b) *Development grant.* The application for a development grant under a cooperative arrangement shall—

(1) Explain the relationship of the activities for which funding is requested to—

(i) The long-range plan of each participating institution; and

(ii) The activities each participating institution carried out or is carrying out under a renewable development grant, if any, awarded previously under the Strengthening Program;

(2) Explain the rationale for each participating institution's decision to request funds to carry out activities to achieve self-sufficiency as part of a cooperative arrangement rather than individually; and

(3) Identify the activities included in any other application the cooperative

arrangement or any participating institution is submitting for funding in the same fiscal year under the Institutional Aid Programs.

(c) *Planning grant.* The application for a planning grant under a cooperative arrangement shall explain the rationale for each participating institution's decision to request funds to develop, as appropriate, its application or its long-range plan as part of a cooperative arrangement rather than individually.

(20 U.S.C. 1069)

§ 624.21 Separate applications.

If an institution wishes to apply in the same year for both a grant as an individual institution and a grant under a cooperative arrangement, the institution shall submit as an individual institution an application that is separate from the application the cooperative arrangement submits.

(20 U.S.C. 1066 and 1221e-3)

Subpart D—How Does the Secretary Make a Grant?

§ 624.30 General evaluation of applications.

(a) The Secretary evaluates an application for a planning grant on the basis of the criteria in § 624.31.

(b) The Secretary evaluates an application for a development grant on the basis of—

(1) The appropriate criterion in § 624.32 for assessing the long-range plan to achieve self-sufficiency; and

(2) The selection criteria in § 624.33.

(c)(1) The Secretary awards up to 100 points for the criteria in § 624.31 and up to 100 points for the criteria in § 624.33.

(2) The maximum possible score for each complete criterion is indicated in parentheses following the title of that criterion.

(3) In the case of criteria worth more than 10 possible points, the maximum possible score for each component of a criterion is indicated in parentheses following that component.

(d) The Secretary will not fund an application for a grant that receives less than 50 points for the criteria in § 624.31 or in §624.33

(20 U.S.C. 1221e-3)

§ 624.31 Selection criteria for planning grants.

The Secretary evaluates an application for a planning grant on the basis of the following criteria:

(a) *Plan of operation.* (Total: 50 points)

(1) The Secretary reviews each application for information that shows that the proposed project is likely to develop a high quality—

(i) Long-range plan providing for self-sufficiency;

(ii) Application; or

(iii) Long-range plan and application.

(2) The Secretary looks for information that shows—

(i) Measurable objectives appropriate to the purpose of the project (10 points); and

(ii) The quality of the project plan to achieve the objectives. The Secretary bases this assessment of quality on—

(A) The quality of the proposed strategy for developing the applicant's long-range plan or application (15 points);

(B) A realistic timetable for achieving each objective (5 points);

(C) The extent to which the applicant will use its own resources and personnel to achieve each objective (10 points); and

(D) The extent to which procedures described by the applicant in its application are likely to ensure effective administration of the proposed project (10 points).

(b) *Key personnel.* (Total: 30 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant will use to develop the long-range plan or application.

(2) The Secretary looks for information that shows—

(i) The extent to which the applicant involves its own personnel, students, and governing board members in the planning process (12 points);

(ii) The qualifications of the project director (6 points);

(iii) The role of each of the key personnel who will participate in the planning process as part of the project (6 points); and

(iv) The time that each person referred to in paragraphs (b)(2)(i) through (iii) of this section plans to commit to the project (6 points).

(c) *Budget and cost effectiveness.* (Total: 10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget that is cost effective.

(2) The Secretary looks for information that shows that costs are reasonable in relation to the objectives of the project.

(d) *Evaluation design.* (Total: 10 points)

(1) The Secretary reviews each application for information that shows the quality of the proposed evaluation design for the project.

(2) The Secretary looks for information that shows that—

(i) The methods of evaluation are appropriate for a planning process; and

(ii) The evaluation criteria are appropriate for determining success in achieving the objectives of the project.

(20 U.S.C. 1057, 1059, 1060, 1062, and 1221e-3)

§ 624.32 Long-range plan to achieve self-sufficiency.

(a) The Secretary reviews each application for a development grant for information that shows whether the applicant's long-range plan provides for self-sufficiency.

(1) In the case of an application for a renewable development grant, the Secretary looks for information that shows whether implementing the long-range plan is likely to result in that institution *moving toward self-sufficiency* by the end of the proposed grant period.

(2) In the case of an application for a non-renewable development grant, the Secretary looks for information that shows whether implementing the long-range plan is likely to result in that institution *becoming self-sufficient* by the end of the proposed grant period.

(b) In reviewing the applicant's long-range plan the Secretary looks for information showing that—

(1) The institution identifies the major problems or deficiencies that inhibit it from becoming self-sufficient and thriving; and

(2) The institution proposes effective strategies to overcome each problem or deficiency.

(c) The Secretary does not consider an application for a development grant unless the applicant's long-range plan meets the appropriate criterion in paragraph (a) of this section.

NOTE: The Secretary does not assign points to this criterion. Rather, the Secretary reviews an application under §§ 624.31 or 624.33 if it meets the criterion and rejects it if it does not.

(20 U.S.C. 1057, 1059, 1060, 1064, 1066, and 1221e-3)

§ 624.33 Selection criteria for development grants.

(a) *Plan of operation.* (Total: 70 points)

(1) The Secretary reviews each application for information that shows the quality of the project's plan of operation.

(2) The Secretary looks for information that shows the following:

(i) The extent to which objectives for each activity are clear, specific, and measurable (10 points).

(ii) The quality of the project plan to achieve the objectives. The Secretary bases this assessment of quality on—

(A) The quality of the implementation strategy (a complete description of what the applicant plans to do and how the applicant plans to do it) for each activity (10 points);

(B) The extent to which achieving the objectives of the proposed activities in the project plan is likely to help the institution attain self-sufficiency (20 points);

(C) A realistic timetable for achieving the objectives of each activity (5 points);

(D) The extent to which the applicant will use its own resources and personnel to achieve each objective (15 points); and

(E) The extent to which procedures described by the applicant in its application are likely to ensure effective administration of the proposed project (10 points).

(b) Quality of key *personnel.* (Total: 10 points)

(1) The Secretary reviews each application for information that shows the quality of key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the key personnel to be used in the project; and

(iii) The time that each person referred to in paragraphs (c)(2) (i) and (ii) of this section plans to commit to the project.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (Total: 10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget that is cost effective.

(2) The Secretary looks for information that shows that costs are reasonable in relation to the objectives of the project.

(d) *Evaluation design.* (Total: 10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation design for the project.

(2) The Secretary looks for information showing that proposed methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(20 U.S.C. 1057, 1060, and 1221e-3)

§ 624.34 Grants under cooperative arrangements.

(a) In considering applications from institutions that propose to carry out projects under a cooperative arrangement, the Secretary gives priority to those applications that the Secretary determines are—

(1) Geographically sound; and

(2) Economically sound.

(b) The Secretary determines that a cooperative arrangement is—

(1) Geographically sound based on the proximity of the participating institutions; and

(2) Economically sound if participating institutions demonstrate that each activity proposed in the application will be carried out more efficiently and effectively at less cost than would be possible if each participating institution were awarded a grant individually.

(c) The Secretary considers each participating institution in a cooperative arrangement to be a separate grantee for purposes of this part.

(20 U.S.C. 1069)

Subpart E—What Conditions Must a Grantee Meet?

§ 624.40 Maintenance of eligibility.

(a) A grantee under an Institutional Aid Program must maintain its eligibility under § 624.2(b) (1) through (3) of 34 CFR 627.2 (b), (c), or (d) as appropriate for the duration of the grant period.

(b) An institution that receives a grant for a grant period lasting more than one year must annually submit to the Secretary an assurance that it continues to meet eligibility requirements under § 624.2(b) (1) through (3) or 34 CFR 627.2 (b)(1)(i)-(iii), (c)(1)(i)-(iii), or (d)(1) as appropriate.

(20 U.S.C. 1058, 1061, and 1064)

§ 624.41 Fiscal requirements.

A grantee shall use Federal funds under the Institutional Aid Programs to supplement—and not supplant—funds the grantee would otherwise have available to plan, develop, or implement activities authorized under the Institutional Aid Programs.

(20 U.S.C. 106[illegible])

§ 624.42 Restrictions on the use of funds.

A grantee may not use funds under any Institutional Aid Program for any of the following:

(a) Activities other than those in its approved application.

(b) Activities that are inconsistent with any State plan of higher education applicable to the institution.

(c) Activities that are inconsistent with a State plan for desegregation of higher education, if any, applicable to the institution.

(d) A school or department of divinity or any religious worship or sectarian activity.

(e) General operating and maintenance expenses.

(f) Indirect costs.

(g) Construction costs except for minor remodeling as part of an approved activity.

(20 U.S.C. 1066 and 1069b)

Subpart F—[Reserved]

Subpart G—What Compliance Procedures Does the Secretary Use?

§ 624.60 Failure to maintain eligibility.

If an institution does not continue to meet the basic eligibility requirements under § 624.2(b) (1) through (3) or 34 CFR 627.2 (b)(1)(i)-(iii), (c)(1)(i)-(iii) or (d)(1) during the grant period, the Secretary terminates the grant.

(20 U.S.C. 1058, 1061, and 1064)

PART 625—STRENGTHENING PROGRAM

Subpart A—General

Sec.

625.1 Strengthening Program.
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625.30 General rules.
625.31 Funding availability.

AUTHORITY: Sections 311-313 and 341-347 of Title III of the Higher Education Act of 1965 (20 U.S.C. 1057-1059 and 1066-1069c), unless otherwise noted.

SOURCE: 47 FR 546, Jan. 5, 1982, unless otherwise noted.

Subpart A—General

§ 625.1 Strengthening program.

The Strengthening Institutions Program (referred to in these regulations as the Strengthening Program) assists eligible institutions of higher education to become self-sufficient by providing funds to improve their academic quality and strengthen their planning, management, and fiscal capabilities.

(20 U.S.C. 1051 and 1057)

§ 625.2 Designation of eligibility.

(a) The Secretary designates an institution of higher education or a branch campus as eligible to be considered for a grant under the Strengthening Program if the Secretary determines that—

(1) In the academic year in which it applies for designation it satisfies the basic institutional eligibility requirements in 34 CFR 624.2;

(2) A substantial percentage of its full-time equivalent (FTE) undergraduate enrollment received Pell grants in the base year;

(3) The average Pell grant received by its students in the base year was high in comparison with the average Pell grant received by students at comparable institutions in that year; and

(4) The average educational and general (E&G) expenditure per FTE undergraduate student in the base year was less than the average E&G expenditure per FTE undergraduate student at institutions that offer similar instruction in that year.

(b) The Secretary groups comparable institutions and institutions that offer similar instruction for purposes of determining institutional eligibility.

(c) The Secretary assigns points to each of the three factors described in paragraphs (a) (2) through (4) of this section as follows:

(1) An institution may receive up to 100 points on the basis of the number of Pell grant recipients divided by the number of FTE undergraduate students enrolled at the institution. The points awarded reflect an institution's position on a scale of 1-100 when compared to the percent of Pell grant recipients enrolled at comparable institutions. (See the illustrative example in paragraph (c)(4) of this section.)

(2) An institution may receive up to 100 points on the basis of the total amount of the Pell grant awards that students received who were enrolled at the institution divided by the number of Pell grant recipients at that institution. The points awarded reflect an institution's position on a scale of 1-100 when compared to the average Pell grant award of students enrolled at comparable institutions. (See the illustrative example in paragraph (c)(4) of this section.)

(3) An institution may receive up to 100 points on the basis of its average E&G expenditure per FTE undergraduate student. Points are assigned to an institution in an inverse relationship to the average E&G expenditure per FTE undergraduate student at that institution. (See the illustrative example in paragraph (c)(4) of this section.)

(4) The Secretary assigns points for the three institutional eligibility criteria described in paragraphs (a) (2) through (4) of this section as follows:

(i) The Secretary develops a table by—

(A) Listing in rank order all comparable institutions nationwide and dividing them into 100 groups, from the highest value for each criterion to the lowest, with equal numbers of institutions in each group; and

(B) Identifying the range of values for each criterion that the institutions within each of the 100 groups possess.

(ii) The Secretary assigns a score from 1-100 for each of the range of values on the table.

(iii) The Secretary determines an applicant institution's score for each criterion by finding the range of values on the table that includes the applicant institution's value and assigning the score associated with that range of values.

(iv) For example, using the criterion in paragraph (a)(2) pertaining to percentage enrollment, all 2-year public institutions nationwide that enroll students receiving Pell grants in the base year would be listed in order of their percentage enrollment of Pell grant recipients from the highest percentage to the lowest and divided into 100 equal groups. If there are 1,000 such institutions, they would be placed in 100 groups with 10 institutions in each group. The percentage of Pell grant recipients enrolled at each of the 10 institutions in the top group is identified and the percent enrollment range for the group is determined. The range of percentage values for each of the remaining groups is similarly determined.

Consider the example provided in the following table. In the top group of institutions, between 99.6 and 100 percent of the student body receives Pell grants; in the next highest group of institutions the range of values is between 99.0 and 99.5 percent; in the lowest group of institutions the range is between 0.1 and 0.5 percent. An applicant institution would receive 100 points if its percentage of Pell grant recipients is between 99.6 and 100; 99 points if its percentage of Pell grant recipients is between 99.0 and 99.5; and 1 point if its percentage of Pell grant recipients is between 0.1 and 0.5. The same procedures apply when assigning points for each eligibility criterion. The Secretary adds the points for each of the three criteria. If the total is above the minimum that the Secretary announces in the FEDERAL REGISTER and the institution meets the basic institutional eligibility requirements in 34 CFR 624.2, then the institution is deemed eligible to apply for assistance.

STRENGTHENING PROGRAM

Point value	Range of values		
	Percent of FTE undergraduate enrollment receiving Pell grant awards	Average Pell grant award per recipient (in dollars)	Average E&G expenditure per FTE undergraduate student (in dollars)
100	99.6-100	1,600-1,750	1-600
99	99.0-99.5	1,550-1,599	601-750
98	98-98.9	1,500-1,549	....
2	0.6-0.9	26-50	6,000-8,000
1	0.1-0.5	1-25	8,001 +

NOTE: The values in the explanation above are hypothetical and are not based on actual data.

(d)(1) In determining whether an institution satisfies the criteria in paragraphs (a) (2) through (4) of this section, the Secretary adds the points earned for each of the three factors. Thus, eligibility is based on the sum of the three factors combined rather than each factor taken separately.

(2) All institutions with a point total above the minimum threshold established by the Secretary satisfy the eligibility criteria in paragraphs (a) (2) through (4) of this section.

(e) Institutions receiving a waiver of the E&G criterion (see § 625.3) described in paragraph (a)(4) of this section must meet a minimum threshold established by the Secretary on the combined remaining eligibility factors described in paragraphs (a) (2) and (3) of this section. For example, to be eligible, an institution that is granted a waiver of the E&G criterion would have to obtain a minimum number of points out of the 200 points available on the criteria in paragraphs (a) (2) and (3) of this section.

(f) The Secretary establishes the minimum threshold for the combined points (as described in paragraphs (d)(1) and (2) of this section) to ensure that the pool of applicants for each type of grant will be at least twice as large as the pool of grantees.

(g) Through a notice in the FEDERAL REGISTER the Secretary annually—

(1) Publishes the tables the Secretary uses to assign points for each eligibility factor;

(2) Announces the total number of points an institution must receive to satisfy the eligibility factors described in paragraphs (a)(2) through (4) of this section; and

(3) Announces the total number of points an institution must receive to satisfy the eligibility factors described in paragraphs (a)(2) and (3) of this section if that institution requests a waiver of the factor in paragraph (a)(4) of this section.

(20 U.S.C. 1058 and 1221e-3)

§ 625.3 Waiver of E&G requirement.

(a) An institution may seek a waiver of the E&G requirement in § 625.2(a)(4) by submitting to the Secretary a written statement including information and an explanation as to why the Secretary should grant the waiver.

(b) The Secretary may waive the E&G requirement in § 625.2(a)(4) if the Secretary determines that—

(1) The institution's failure to comply with the requirement is caused by factors that distort that requirement with regard to that institution; and

(2) The institution's designation as an eligible institution for this program is consistent with the purposes of the program.

(c) Factors that the Secretary considers may distort an institution's E&G expenditures per FTE undergraduate student include, but are not limited to, the following:

(1) Low student enrollment.

(2) Size of the campus.

(3) Location in an unusually high cost of living area.

(4) High energy costs.

(5) An increase in State funding to that institution in order to comply with a desegregation plan for higher education.

(6) High cost professional training which is organized, budgeted, and conducted separately from regular graduate and undergraduate instruction, such as medical, dental, and legal programs.

(20 U.S.C. 1067 and House Report 96-1337, 96th Cong. 2d Sess. p. 161 (1980))

§ 625.1 Regulations that apply to the Strengthening Program.

The following regulations apply to the Strengthening Program:

(a) The regulations in 34 CFR Part 624.

(b) The regulations in this Part 625.

(20 U.S.C. 1221e-3, 1057-1059, and 1066-1069c)

Subpart B—What Kinds of Grants Does the Secretary Award Under the Strengthening Program?

§ 625.10 Types of grants under the Strengthening Program.

Under the Strengthening Program the Secretary awards—

(a) Planning grants;

(b) Renewable development grants for a period of one to three years; and

(c) Non-renewable development grants for a period of four to seven years.

(20 U.S.C. 1059)

§ 625.11 Allowable activities.

(a) Planning grants may be used for the purposes described in 34 CFR 624.11(a)(1) through (3).

(b) Development grants may be used to carry out any of the activities listed in 34 CFR 624.13(b) or other activities that promote self-sufficiency.

(20 U.S.C. 1051, 1057, and 1059)

Subpart C—How Does One Apply for a Grant?

§ 625.20 Limitations on applications.

(a) Regardless of whether an institution is applying for a grant individually or as part of a cooperative arrangement, it may not apply in the same fiscal year for a renewable (one-to-three-year) development grant and a non-renewable (four-to-seven-year) development grant.

(b) An institution that has received a non-renewable development grant—

(1) Under this part is ineligible to apply for any other grant under this part, either individually or as part of a cooperative arrangement; and

(2) Under the Aid to Institutions with Special Needs Program (Special Needs Program) or Challenge Grant Program may not apply for a renewable grant under this part, either individually or as part of a cooperative arrangement.

(c) An institution may not apply for a planning grant solely to prepare an application for a development grant under this part unless the institution submits a long-range plan containing all the elements described in 34 CFR 624.22.

(d)(1) Except as provided in paragraph (d)(2) of this section, an institution may not apply for a renewable development grant if the award of the grant results in the institution receiving funds from more than one renewable development grant during any fiscal year.

(2) An institution may apply for a renewable development grant even if the award of that grant would result in the institution receiving funds from two renewable development grants during any fiscal year, if one of the grants is awarded to a cooperative arrangement and the other is awarded individually.

(e)(1) Except as provided in paragraph (e)(2) of this section, an institution may not apply for a non-renewable development grant if it has received a non-renewable development grant under the Special Needs Program.

(2) An institution that has completed, or is in the final year, of a non-renewable development grant under the Special Needs Program may apply for a non-renewable development grant if the institution—

(i) Is otherwise eligible for a non-renewable development grant under this part; and

(ii) Demonstrates to the Secretary's satisfaction that unforeseeable circumstances prevented it from—

(A) Achieving or sustaining self-sufficiency; and

(B) Otherwise fulfilling the objectives of its previous development grant under the Special Needs Program.

(20 U.S.C. 1057 and 1059)

§ 625.21 Planning grants and development grants.

(a) In its application for a grant under this program an applicant shall—

(1) Indicate whether it is applying individually or under a cooperative arrangement for—

(i) A planning grant;

(ii) A renewable development grant; or

(iii) A non-renewable development grant; and

(2) Include the applicable information required under 34 CFR 624.21 and, if appropriate, § 624.23.

(b) If the application is for a planning grant, the applicant shall indicate whether it will use the grant to—

(1) Develop its long-range plan;

(2) Develop an application for a development grant; or

(3) Develop both a long-range plan and an application for a development grant.

(20 U.S.C. 1059 and 1066)

Subpart D—How Does the Secretary Make a Grant?

§ 625.30 General rules.

(a) Using the procedures in 34 CFR 624.30, the Secretary evaluates applications for—

(1) Planning grants on the basis of the criteria in 34 CFR 624.31; and

(2) Development grants on the basis of the criteria in 34 CFR 624.32 and 624.33.

(b) In the case of applications for development grants, the Secretary gives special consideration to applicants that propose to carry out the activities described in 34 CFR 624.13(b).

(20 U.S.C. 1057, 1066, and 1068)

§ 625.31 Funding availability.

(a) The Secretary makes available, for any fiscal year, the following:

(1) For awards to junior or community colleges, not less than 24 percent of the funds appropriated under this program.

(2) For awards for non-renewable development grants, not less than 25 percent of the funds appropriated under this program.

(b) Each year the Secretary announces through a notice in the FEDERAL REGISTER—

(1) The amount of funds that will be used to fund non-renewable development grants under this program; and

(2) The maximum amount of funds that the Secretary may award to a grantee that year for each type of grant available under this program.

(20 U.S.C. 1069c)

PART 626—SPECIAL NEEDS PROGRAM

Subpart A—General

Sec.

626.1 Special Needs Program.
626.2 Designation of eligibility.
626.3 Waiver of E&G requirement.
626.4 Regulations that apply to the Special Needs Program.

Subpart B—What Kinds of Grants Does the Secretary Award Under the Special Needs Program?

626.10 Types of grants under the Special Needs Program.
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626.20 Limitation on applications.
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Subpart D—How Does the Secretary Make a Grant?

626.30 General rules.
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Subpart E—What Conditions Must a Grantee Meet?

626.40 Cost sharing.

AUTHORITY: Sections 321-324 and 341-347 of Title III of the Higher Education Act of 1965 (20 U.S.C. 1060-1063 and 1066-1069c).

SOURCE: 47 FR 548, Jan. 5, 1982, unless otherwise noted.

Subpart A—General

§ 626.1 Special Needs Program.

The Aid to Institutions with Special Needs Program (referred to in these regulations as the Special Needs Program) assists institutions of higher education to become self-sufficient by providing funds to improve their academic quality and strengthen their planning, management, and fiscal capabilities.

(20 U.S.C. 1051 and 1221e-3)

§ 626.2 Designation of eligibility.

(a) The Secretary designates an institution of higher education or a branch campus as eligible to be considered for a grant under the Special Needs Program if the Secretary determines that—

(1) In the academic year in which it applies for designation—

(i) It satisfies the basic institutional eligibility requirements in 34 CFR 624.2;

(ii) It has an enrollment of at least 100 full-time equivalent (FTE) students; and

(iii) In the case of a branch campus, it is located in a community different from that in which its parent institution is located.

(2) A substantial percentage of its FTE undergraduate enrollment received assistance under the need-based assistance programs (Pell Grant, Supplemental Educational Opportunity Grant, National Direct Student Loan, and College Work-Study Programs) in the base year;

(3) The average amount of need-based assistance received by its students in the base year was high in comparison with the average amount of assistance received by students under those programs at comparable institutions in that year; and

(4) The average educational and general (E&G) expenditure per FTE undergraduate student in the base year was less than the average E&G expenditure per FTE undergraduate student at institutions that offer similar instruction in that year.

(b) The Secretary groups comparable institutions and institutions that offer similar instruction for purposes of determining institutional eligibility.

(c) The Secretary assigns points to each of the three factors described in paragraph (a) (2) through (4) of this section as follows:

(1) An institution may receive up to 50 points on the basis of the number of recipients of need-based assistance divided by the number of FTE undergraduate students enrolled at the institution. The points awarded reflect an institution's position on a scale of 1-50 when compared to the percent of need-based assistance recipients enrolled at comparable institutions. (See the illustrative example in paragraph (c)(4) of this section.)

(2) An institution may receive up to 50 points on the basis of the total amount of need-based assistance received by students enrolled at the institution divided by the total number of recipients of need-based assistance enrolled at that institution. The points awarded reflect an institution's position on a scale of 1-50 when compared to the average amount of need-based assistance received by students at comparable institutions. (See the illustrative example in paragraph (c)(4) of this section.)

(3) An institution may receive up to 100 points on the basis of its average E&G expenditures per FTE undergraduate student. Points are assigned to an institution in an inverse relationship to the average E&G expenditure per FTE undergraduate student at that institution. (See the illustrative example in paragraph (c)(4) of this section.)

(4) The Secretary assigns points for the three institutional eligibility criteria described in paragraphs (a)(2) through (4) of this section as follows:

(i) The Secretary develops a table by—

(A) Listing in rank order all comparable institutions nationwide that enroll students receiving need-based assistance in the base year and dividing them into 50 groups, from the highest value for each criterion to the lowest, with equal numbers of institutions in each group; and

(B) Identifying the range of values for each criterion that the institutions within each of the 50 groups possess.

(ii) The Secretary assigns a score for each of the range of values.

(iii) The Secretary determines an applicant institution's score for each criterion by finding the range of values on the table that includes the applicant institution's value and assigning the score associated with that range of values.

(iv) For example, using the criterion in paragraph (a)(2) of this section pertaining to percentage enrollment, all 2-year public institutions nationwide would be listed in order of their percentage enrollment of need-based aid recipients from the highest percentage to the lowest and divided into 50 equal groups. If there are 1000 such institutions, they would be placed in 50 groups with 20 institutions in each group. The percentage of need-based aid recipients enrolled at each of the 20 institutions in the top group is identified and the percent enrollment range for the group is determined. The range of percentage values for each of the remaining groups is similarly determined.

Consider the example provided in the following table. In the top group of institutions, between 99.0 and 100 percent of the student body receives need-based aid; in the next highest group of institutions the range of values is between 97.0 and 98.9 percent; in the lowest group of institutions the range is between 1.0 and 0.9 percent. An applicant institution would receive 50 points if its percentage of need-based aid recipients is between 99.0 and 100; 49 points if its percentage of need-based aid recipients is between 97.0 and 98.9; and 1 point if its percentage of need-based aid recipients is between 1.0 and 0.9. The same procedures apply when assigning points for each eligibility criterion. The Secretary adds the points for each of the three criteria. If the total is above the minimum that the Secretary announces in the FEDERAL REGISTER and the institution meets the basic institutional eligibility requirements in 34 CFR 624.2, then the institution is deemed eligible to apply for assistance.

SPECIAL NEEDS PROGRAM

Point score	Range of values		
	Percent of FTE undergraduate enrollment receiving need-based assistance	Average amount of need-based assistance per recipient (in dollars)	Average E&G expenditure per FTE undergraduate student (in dollars)[1]
50	99.0-100	3,500+	1-750
49	97.0-98.9	3,000-3,499	751-950
1	0.1-.9	1-100	8,001+

[1] When computing points for the E&G criterion, multiply the point score by 2 to obtain the proper score based on a scale of 1-100. For example, if the E&G expenditure of an applicant institution was $900, the applicant would earn 98 points (49 multiplied by 2).

NOTE: The values in the explanation above are hypothetical and are not based on actual data.

(d)(1) In determining whether an institution satisfies the criteria in paragraphs (a)(2) through (4) of this section, the Secretary adds the points earned for each of the three factors. Thus, eligibility is based on the sum of the three factors combined rather than each factor taken separately.

(2) All institutions with a point total above the minimum threshold established by the Secretary satisfy the eligiblity criteria in paragraphs (a)(2) through (4) of this section.

(e) Institutions receiving a waiver of the E&G criterion (see § 626.3) described in paragraph (a)(4) of this section must meet a minimum threshold established by the Secretary on the combined remaining eligibility factors described in paragraphs (a)(2) and (3) of this section. For example, to be eligible, an institution that is granted a waiver of the E&G criterion will have to obtain a minimum number of points out the 100 points available on the criteria in paragraphs (a) (2) and (3) of this section.

(f) The Secretary establishes the minimum threshold for the combined points (as described in paragraphs (d) (1) and (2) of this section) to ensure that the pool of applicants for each type of grant will be at least twice as large as the pool of grantees.

(g) Through a notice in the FEDERAL REGISTER the Secretary annually—

(1) Publishes the tables the Secretary uses to assign points for each eligibility factor;

(2) Announces the total number of points an institution must receive to satisfy the eligibility factors described in paragraphs (a)(2) through (4) of this section; and

(3) Announces the total number of points an institution must receive to satisfy the eligibility factors described in paragraphs (a) (2) and (3) of this section if that institution requests a waiver of the factor in paragraph (a)(4) of this section.

(20 U.S.C. 1061 and 1221e-3)

§ 626.3 Waiver of E&G requirement.

(a) An institution may seek a waiver of the E&G requirement in § 626.2(a)(4) by submitting to the Secretary a written statement including information and an explanation as to why the Secretary should grant the waiver.

(b) The Secretary may waive the E&G requirement in § 626.2(a)(4) if the Secretary determines that—

(1) The institution's failure to comply with the requirement is caused by factors that distort that requirement with regard to that institution; and

(2) The institution's designation as an eligible institution for this program is consistent with the purposes of the program.

(c) For the purposes of paragraph (b)(1) of this section, factors that the Secretary considers may distort an institution's E&G expenditures per FTE undergraduate student include, but are not limited to, the following:

(1) Low student enrollment.

(2) Size of the campus.

(3) Location in an unusually high cost of living area.

(4) High energy costs.

(5) An increase in State funding to that institution in order to comply with a desegregation plan for higher education.

(6) High cost professional training which is organized, budgeted, and conducted separately from regular graduate and undergraduate instruction, such as medical, dental, and legal programs.

(d) For purposes of paragraph (b)(2) of this section, factors that the Secretary may also use in determining whether an institution's designation as an eligible institution is consistent with the needs of this program include whether the institution has—

(1) Extreme financial limitations requiring low faculty salaries, low cost of instruction for students, and low library expenditures;

(2) Little or no endowment, whether or not unrestricted;

(3) A high student-to-faculty ratio;

(4) A substantial percentage of students receiving need-based Federal student assistance;

(5) Limited library resources;

(6) A low percentage of faculty with earned doctoral degrees;

(7) Poor physical facilities and limited resources to maintain them;

(8) Little or nc support from foundations, alumni, or corporations;

(9) Limited or no sponsored research or faculty publications;

(10) An inadequate development office and a limited capacity for long-range planning; and

(11) Poor or inadequate fiscal management and accounting procedures.

(20 U.S.C. 1061 and 1067, and House Report 96-1337, 96 Cong. 2d Sess. p. 161 (1980))

§ 626.4 Regulations that apply to the special needs program.

The following regulations apply to the Special Needs Program:

(a) The regulations in 34 CFR Part 624.

(b) The regulations in this Part 626.

(20 U.S.C. 1060-1063, 1066-1069c, and 1221e-3)

Subpart B—What Kinds of Grants Does the Secretary Award Under the Special Needs Program?

§ 626.10 Types of grants under the special needs program.

Under the Special Needs Program the Secretary awards—

(a) A planning grant for a period of one year; and

(b)(1) A non-renewable development grant for a period of one to five years; or

(2) If an institution previously received a planning grant under this program, a non-renewable develop-

ment grant for a period of one to four years.

(20 U.S.C. 1062)

§ 626.11 Allowable activities.

(a) Planning grants may be used to develop a long-range plan as described in 34 CFR 624.11(a)(1).

(b) Development grants may be used to carry out the activities listed in 34 CFR 624.13(b).

(20 U.S.C. 1060 and 1062)

Subpart C—How Does One Apply for a Grant?

§ 626.20 Limitation on applications.

An institution that has received a non-renewable development grant under this part or under the Strengthening Program (34 CFR Part 625) may not apply for a grant under this part, either individually or as part of a cooperative arrangement.

(20 U.S.C. 1060, 1062 and 1221e-3)

§ 626.21 Planning grants and development grants.

In its application for a grant under this program, an applicant shall—

(a) Indicate whether it is applying individually or as part of a cooperative arrangement for—

(1) A planning grant; or

(2) A development grant;

(b) Include the applicable information required under 34 CFR 624.21; and

(c) In the case of an application for a development grant, provide assurances to the Secretary that it will have the fiscal resources to pay for its share of assistance beyond the second year.

(20 U.S.C. 1060, 1062, and 1066)

Subpart D—How Does the Secretary Make a Grant?

§ 626.30 General rules.

Using the procedures in 34 CFR 624.30, the Secretary evaluates applications for—

(a) Planning grants on the basis of the criteria in 34 CFR 624.31; and

(b) Development grants on the basis of the criteria in 34 CFR 624.32 and 624.33.

(20 U.S.C. 1060, 1066, and 1068)

§ 626.31 Funding availability.

(a) The Secretary makes available, for any fiscal year, the following:

(1) For awards to junior or community colleges with special needs, not less than 30 percent of the funds appropriated under this program.

(2) For awards to institutions with special needs that have historically served substantial numbers of black students, not less than 50 percent of the amount received by those institutions under the Strengthening Developing Institutions Program (SDIP) for fiscal year 1979. Fifty percent of the amount these institutions received under the SDIP for fiscal year 1979 is $27,035,000.

(b) The Secretary considers institutions that have historically served substantial numbers of black students to be those listed in the 1978 publication by the National Center for Education Statistics entitled *Traditionally Black Institutions of Higher Education: Their Identification and Selected Characteristics.*

(c) Each year the Secretary announces in a notice in the FEDERAL REGISTER—

(1) The amount of funds that will be used to fund non-renewable development grants under this program; and

(2) The maximum amount of funds that the Secretary may award to a grantee that year for each type of grant available under this program.

(20 U.S.C. 1069c)

Subpart E—What Conditions Must a Grantee Meet?

§ 626.40 Cost sharing.

The Secretary pays the entire cost of any grant for the first two years of assistance under this program. After that the Secretary pays—

(a) Ninety percent of the cost in the third year;

(b) Eighty percent of the cost in the fourth year; and

(c) Seventy percent of the cost in the fifth year.

(20 U.S.C. 1063)

PART 627—CHALLENGE GRANT PROGRAM

Subpart A—General

Sec.
627.1 Challenge Grant Program.
627.2 Eligible applicants.
627.3 Regulations that apply to the Challenge Grant Program.

Subpart B—What Kind of Grant Does the Secretary Award Under the Challenge Grant Program?

627.10 Type of grant under the Challenge Grant Program.
627.11 Allowable activites.

Subpart C—How Does One Apply for a Grant?

627.20 General.

Subpart D—How Does the Secretary Make a Grant?

627.30 General rules.
627.31 Evaluation of applications for continuation awards.

Subpart E—What Conditions Must a Grantee Meet?

627.40 Matching requirements.

AUTHORITY: Sections 331-332 and 341-347 of the Title III of the Higher Education Act of 1965 (20 U.S.C. 1064-1069c), unless otherwise noted.

SOURCE: 47 FR 550, Jan. 5, 1982, unless otherwise noted.

Subpart A—General

§ 627.1 Challenge Grant Program.

The Challenge Grant Program provides Federal financial assistance as an incentive for eligible institutions of higher education to seek alternative sources of funding to become self-sufficient.

(20 U.S.C. 1051 and House Report 96-520, 96th Cong. 1st Sess., pp. 16-17, (1979))

§ 627.2 Eligible applicants.

(a) An institution of higher education or a branch campus is eligible to apply for a grant under the Challenge Grant Program if—

(1) The Secretary has designated it as an eligible insititution under the Strengthening Program (34 CFR 625.2) or Special Needs Program (34 CFR 626.2); or

(2) The Secretary has designated it as an eligible institution under paragraph (b), (c) or (d) of this section.

(b)(1) The Secretary designates an institution of higher education as eligible to be considered for a grant under this program if that institution—

(i) Does not award a bachelor's degree; but

(ii) Is, and has been for the five academic years preceding the academic year for which it seeks assistance, legally authorized by the State in which it is located to provide an educational program for which it awards a graduate or professional degree;

(iii) Satisfies the requirements of 34 CFR 624.2, other than the requirement of § 624.2(b)(2); and

(iv) Would have qualified as an eligible institution under 34 CFR 625.2 or 626.2 if—

(A) The requirement of 34 CFR 624.2(b)(2) were disregarded; and

(B) Calculations were based on need-based aid received by graduate level students, rather than undergraduate level students.

(2) "Comparable institutions" for purposes of paragraph (b) of this section as applied to determining eligibility under 34 CFR 625.2 or 626.2 means the types of institutions described in paragraph (b)(1) (i) and (ii) of this section.

(c)(1) the Secretary may designate an institution of higher education as eligible to be considered for a grant under this program if that institution—

(i) Is not a junior or community college; and

(ii) Does not award a bachelor's, graduate, postgraduate, or professional degree; but

(iii) Is, and has been for the five academic years preceding the academic year for which it seeks assistance, legally authorized by the State in which it is located to provide a medical education program;

(iv) Makes a substantial contribution to medical education opportunities for minorities and the economically disadvantaged;

(v) Satisfies the requirements of 34 CFR 624.2, other than the requirement of § 624.2(b)(2); and

(vi) Would have qualified as an eligible institution under 34 CFR 625.2 or 626.2 based on the enrollment of students in its medical education program if the Secretary had waived the requirement of § 624.2(b)(2).

(2) "Comparable institutions" for purposes of paragraph (c) of this section as applied to determining eligibility under 34 CFR 625.2 or 626.2 means the types of institutions described in paragraph (c)(1) (i), (ii), and (iii) of this section.

(d) The Secretary designates an institution of higher education as eligible to be considered for a grant under this program if that institution—

(1) Provides a medical education program which—

(i) Leads to a doctor of medicine degree; or

(ii) Is not less than a two-year program fully acceptable toward such a degree;

(2) In the base year enrolled minority and educationally disadvantaged students constituting at least 35 percent of its full-time equivalent enrollment; and

(3) In fiscal year 1980 received a grant as a two-year medical school under section 788(a) of the Health Professions Education Assistance Act of 1976.

(e) The Secretary announces annually in a notice in the FEDERAL REGISTER the conditions, if any, under which the Secretary will waive the requirement of 34 CFR 624.2(b)(2) in the case of an institution applying for eligibility under paragraph (c) of this section.

(20 U.S.C. 1064)

§ 627.3 Regulations that apply to the Challenge Grant Program

The following regulations apply to the Challenge Grant Program:

(a) Unless otherwise indicated, the regulations in 34 CFR Part 624.

(b) The regulations in this Part 627.

(c) Applicable provisions of 34 CFR Parts 625 and 626.

(20 U.S.C. 1221e-3(a)(1) and 1064)

Subpart B—What Kind of Grant Does the Secretary Award Under the Challenge Grant Program?

§ 627.10 Type of grant under the Challenge Grant Program.

(a) Under the Challenge Grant Program the Secretary awards a non-renewable development grant to an applicant for a period of up to five years.

(b) The Secretary does not award planning grants under this program.

(c) The Secretary may award a grant under this program to an institution that is simultaneously receiving a non-renewable development grant under the Strengthening Program or the Special Needs Program.

(20 U.S.C. 1064 and 1065)

§ 627.11 Allowable activities.

(a) If an institution qualifies for a grant on the basis of being designated by the Secretary as eligible under the Strengthening Program, as described in 34 CFR 625.2, it may use its grant to carry out the activities authorized under the Strengthening Program (see 34 CFR 625.11).

(b) If an institution qualifies for a challenge grant on the basis of being designated by the Secretary as eligible under the Special Needs Program, as described in 34 CFR 626.2, it—

(1) May use its grant to carry out the activities authorized under the Special Needs Program (see 34 CFR 626.11); and

(2) Must use those funds for the purpose of—

(i) Achieving greater financial independence; and

(ii) Eradicating the applicable conditions—

(A) Listed in 34 CFR 626.3(d); and

(B) Discussed in its application for funds, as required in § 627.20(a)(2).

(c) If an institution qualifies for a grant on the basis of being designated by the Secretary as eligible under this program under one of the criteria described in § 627.2(b), (c) or (d), it may use its grant to carry out those activities listed in 34 CFR 624.13(b).

(20 U.S.C. 1064 and 1065)

Subpart C—How Does One Apply for a Grant?

§ 627.20 General.

(a)(1) In its application for funding, an institution shall include the information required under 34 CFR 624.21 (a) and (b).

(2) In the case of an applicant that qualifies under this part on the basis of being designated an eligible institution under the Special Needs Program, the applicant shall discuss, in its application, those factors listed in 34 CFR 626.3(d) that are characteristic of its status as an institution with special needs.

(b) In its application for funding, an institution shall also include the following:

(1) Evidence that funds are available to the institution to match the funds it is requesting. The applicant may satisfy this requirement by—

(i) Providing a list of the source(s) and the amount of funds each source is contributing for each year of the grant period; and

(ii) Including a letter of intent from each source listed.

(2) An assurance that all matching funds will be—

(i) New funds previously unavailable to the institution from non-Federal sources for activities allowable under the Challenge Grant Program; and

(ii) Used to carry out those portions of the institution's long-range plan for which funds may be used under this part.

(c) If an applicant is a public institution, it shall include in its application—

(1) The comments of the appropriate State agency responsible for higher education in its State; or

(2) A statement that the institution requested the State agency to comment and the agency failed to comment.

(20 U.S.C 1065,1066, and House Report 96-520, 96 Cong. 1st Sess., p. 16 (1979))

Subpart D—How Does the Secretary Make a Grant?

§ 627.30 General rules.

(a) Using the procedures in 34 CFR 624.30, the Secretary evaluates applications on the basis of the criteria in 34 CFR 624.32 and 624.33.

(b) Under this part the Secretary—

(1) Awards grants—

(i) To individual eligible institutions only;

(ii) For a period not to exceed the period for which matching funds, as described in § 627.40, are available to the applicant at the time its original application is submitted; and

(2) Gives preference in awarding grants to applications from institutions are receiving, or have received, grants under the Strengthening Program or Special Needs Program.

(20 U.S.C. 1065)

§ 627.31 Evaluation of applications for continuation awards.

In addition to the requirements in 34 CFR Part 75 (EDGAR) that pertain to the Secretary's evaluation of continuation award applications, the Secretary looks for evidence that an institution's matching funds are available at the time it submits its application.

(20 U.S.C. 1065)

Subpart E—What Conditions Must a Grantee Meet?

§ 627.40 Matching requirements.

A grantee must match the funds it receives under this program, on a dollar-for-dollar basis, with new funds that were previously unavailable to the applicant from non-Federal sources for activities allowable under the Challenge Grant Program.

(20 U.S.C. 1065)

PART 629—VETERANS' COST-OF-INSTRUCTION PAYMENTS TO INSTITUTIONS OF HIGHER EDUCATION

Subpart A—General

Sec.
629.1 Veterans' Cost-of-Instruction Payments program.
629.2 Eligible parties.
629.3 Eligibility requirements.
629.4 Regulations that apply to the Veterans' Cost-of-Instruction Payments program.
629.5 Definitions that apply to the Veterans' Cost-of-Instruction Payments program.

Subpart B—What Kinds of Activities Does the Secretary Assist Under this Program?

629.11 Required activities.
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Subpart C—How Does One Apply for a Grant?

629.21 Application requirements.

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629.31 Calculation of cost-of-instruction payments.
629.32 Allocation of funds.

Subpart E—What Conditions Must Be Met by a Grantee?

629.41 Allowable expenditures.

AUTHORITY: Section 420, Higher Education Act of 1965, as amended (20 U.S.C. 1070e-1), unless otherwise noted.

SOURCE: 46 FR 39779, Aug. 4, 1981, unless otherwise noted.

Subpart A—General

§ 629.1 Veterans' cost-of-instruction payments program.

This program provides funds to institutions of higher education for the educational needs of veterans. A grantee uses its award to establish and maintain a full-time Office of Veterans' Affairs which provides outreach and recruitment activities, counseling and tutorial services, and special programs for educationally disadvantaged veterans.

(20 U.S.C. 1070e-1)

§ 629.2 Eligible parties.

Institutions of higher education that meet the requirements of § 629.3 are eligible to receive assistance under this part.

(20 U.S.C. 1070e-1(a))

§ 629.3 Eligibility requirements.

(a) *Requirements for initial eligibility.*

An institution of higher education is eligible to receive payments under this part if the number of qualified undergraduate veteran students equals at least 25 in number and at least one of the following:

(1) 110 percent of the number of such qualified undergraduate veteran students in attendance on April 16 of the preceding academic year; or

(2) 10 percent of the total number of undergraduate students in attendance at the institution during the current academic year, if this number does not constitute a percentage of its undergraduate students which is less than the percentage for the preceding academic year.

(20 U.S.C. 1070e-1(a)(1))

(b) *Requirements for continuing eligibility.*

An institution of higher education which is applying for assistance during an academic year following one during which it has received assistance under the veterans cost-of-instruction program is eligible to receive payments under this part if—

(1) The applicant meets the criteria for initial eligibility in paragraph (a) of this section; or

(2) The applicant has a percentage decline in the number of qualified undergraduate veteran students no greater than the national percentage decline in the number of such qualified undergraduate veteran students enrolled in all institutions of higher education since the applicant's initial year of eligibility; or

(3) The Secretary determines, on the basis of evidence presented by the applicant, that the applicant is making reasonable efforts to continue to recruit, enroll, and provide necessary services to veterans, taking into consideration the extent to which the

number of persons referred to in paragraph (a) of this section falls short of meeting the ratio criterion set forth in paragraph (b)(2) of this section.

(20 U.S.C. 1070e-1(a)(2))

(c) *Requirements for renewed eligibility.*

An applicant which has qualified for payment during any preceding fiscal year, but subsequently became ineligible, is eligible to receive payments under this part if—

(1) The applicant would have been eligible had paragraph (b) of this section been in effect when the applicant became ineligible;

(2) The applicant has had a full-time office of veterans' affairs since its last year of participation in the program; and

(3) The appropriations made available during the fiscal year in which the award would be made are in excess of (i) $14,380,000, or (ii) the amount requested in the President's budget, whichever is greater, by an amount sufficient to make payments to all institutions meeting the requirements of paragraphs (c)(1) and (c)(2) of this section.

(20 U.S.C. 1070e-1(a)(3))

§ 629.4 Regulations that apply to the veterans' cost-of-instruction payments program.

The following regulations apply to the Veterans' Cost-of-Instruction Payments program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs), except sections 75.111, 75.113, 75.114, 75.115, and 34 CFR Part 77 (Definitions).

(b) The regulations in this Part 629.

(20 U.S.C. 1070e-1, 1088, 1141)

§ 629.5 Definitions that apply to the veterans' cost-of-instruction payments program.

The following definitions apply to the regulations in this part:

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant, Application, Award, Department, EDGAR, Fiscal Year, Grant, Grant Period, Secretary, and State.

(b) *Other definitions that apply to this part.* The following additional definitions apply to this part:

"Academic year" means a period beginning on July 1 and ending the following June 30.

"Cost-of-Instruction payment," or "payment," means an amount calculated with respect to an institution of higher education for an academic year on the basis of eligible undergraduate veteran student enrollment.

"Counseling" means professional assistance available to veterans for consultation on personal, family, educational, and vocational problems.

"Full-time" with respect to an Office of Veterans' Affairs, means that the Office of Veterans' Affairs:

(1) is staffed by at least one person who is employed by an institution on a full-time basis and whose sole institutional responsibility is that of coordinating the activities of the office; and

(2) provides services at times and places convenient to the veterans being served. An institution described in section 629.11(c) may employ part-time employees for this purpose who together assume the responsibility of at least one full-time employee.

"Institution of higher education" is defined in the Higher Education Act of 1965, as amended, Pub. L. 89-329, Section 1201(a).

"Instructional expenses in academically related programs" means the expenditures of instructional departments of an institution of higher education for salaries, office expenses, equipment and research.

"Outreach" means an extensive, coordinated, community-wide program of reaching veterans, with special emphasis on educationally disadvantaged veterans, service-connected disabled veterans, other disabled or handicapped veterans, and incarcerated veterans within the institution's service area to determine their needs and to make appropriate referral and follow-up arrangements with relevant service agencies.

"Qualified undergraduate veteran student" means an undergraduate veteran student who is in attendance at the institution on April 16 of the academic year in which the institution is applying, or, when this date falls between academic terms of the institution, the end of the previous academic term.

"Recruitment" means a concerted effort to interest veterans in taking advantage of opportunities for a wide variety of postsecondary training experiences at the institution or other agencies providing educational programs.

"School or department of divinity" is defined in the Higher Education Act of 1965, as amended, Pub. L. 89-329, Section 1201(1).

"Special education programs" means specially designed remedial, tutorial, and motivational programs designed to promote success in postsecondary education.

"Student" means a person in attendance as at least a half-time student at an institution of higher education. The term is further defined as follows:

(1) "Full-time student" means a student who is enrolled for the equivalent of not less than 12 semester hours and is being charged on the basis of the institution's full-time fee schedule.

(2) "Three-quarter-time student" means an enrolled student who is carrying a three-quarter-time academic work load as determined by the institution and which amounts to at least three-quarters of the course-load of a full-time student.

(3) "Half-time student" means an enrolled student who is carrying a half-time academic work load as determined by the institution and which amounts to at least one-half the course-load of a full-time student.

"Undergraduate student" means a student enrolled in an undergraduate course of study at an institution of higher education who—

(1) has not been awarded a baccalaureate or first professional degree;

(2) is pursuing a program of studies at a two-year institution leading to a certificate, degree, or diploma; or

(3) is receiving or has received educational assistance under subchapter V or subchapter VI of chapter 34 of title 38, United States Code.

"Veteran" means a person receiving benefits under chapter 31 or chapter 34 of title 38, United States Code, or who, if enrolled in an institution of higher education, would be eligible for such benefits.

(20 U.S.C. 1070e-1, 1088, 1141)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 629.11 Required activities.

(a) A grantee must maintain a full-time office of veterans' affairs (1) which has responsibility for veterans' outreach, recruitment, and special education programs; and (2) which provides educational, vocational, and personal counseling for veterans.

(20 U.S.C. 1070e-1(c)(1)(C)(i))

(b) A grantee must also make an adequate effort to—

(1) Provide programs designed to prepare educationally disadvantaged veterans for study at an institution of higher education under subchapter V of chapter 34 of Title 38, United States Code.

(2) Provide active outreach services with special emphasis on service-connected disabled veterans, other disabled or handicapped veterans, incarcerated veterans, and educationally disadvantaged veterans, and recruiting and counseling activities through the use of funds available under federally assisted work/study programs (with special emphasis on the veterans-student services program under section 1685 of title 38, United States Code);

(3) Provide an active tutorial assistance program, including dissemination of information regarding these programs, in order to make maximum use of the benefits available under section 1692 of title 38, United States Code; and

(4) Coordinate activities provided under this part with the readjustment counseling program authorized under section 612A of title 38, United States Code, and with the veterans' employment and training initiatives authorized under the Comprehensive Employment and Training Act, and under chapters 41 and 42 of Title 38, United States Code, in order to assist in serving the readjustment, rehabilitation,

personal counseling and employment needs of veterans.

(20 U.S.C. 1070e-1(c)(1)(C)(iii)(v))

(c) A grantee with less than 75 qualified undergraduate veteran students need only maintain a full-time office of veterans' affairs which provides recruitment and counseling services.

(20 U.S.C. 1070e-1(c)(1))

(d) If a grantee cannot feasibly itself, in terms of the number of veterans in attendance there, carry out all of the required activities, the Secretary may permit one or more of the required functions to be carried out under a consortium agreement between the institution and one or more other institutions located within a reasonable commuting distance.

(20 U.S.C. 1070e-1(c)(1))

(e) Services provided under this part must be readily accessible to all persons for which the institution receives a payment under § 629.31(a).

(20 U.S.C. 1070e-1)

§ 629.12 Prohibited activities.

The funds received by the institution under this section may not be used for a school or Department of Divinity or for any religious worship or sectarian activity.

(20 U.S.C. 1070e(c)(1)(A)(ii))

Subpart C—How Does One Apply for a Grant?

§ 629.21 Application requirements.

(a) Assistance will be provided on the basis of an application submitted by an institution on the form prescribed by the Secretary.

(b) Each application must contain the following:

(1) Information that shows the institution is eligible for assistance.

(2) Information necessary to determine the amount of the payment to which the applicant would be entitled.

(3) An assurance that the institution will expend during the award period for all academically-related programs of the institution, in terms of either total or per student expenditure, at least the average amount it expended for such programs during the preceding three academic years.

(20 U.S.C. 1070e-1(c)(1)(A))

Subpart D—How Does the Secretary Make a Grant?

§ 629.31 Calculation of cost-of-instruction payments.

The Secretary determines a grantee's cost-of-instruction payment based on the following institutional data:

(a) The number of qualified undergraduate veteran students. For such students, a grantee receives the following payments:

(1) $300 per full-time student.

(2) $225 per three-quarter-time student.

(3) $150 per half-time student.

(b) The number of qualified undergraduate veteran students who have ever received educational assistance under subchapter V or subchapter VI of chapter 34 of Title 38, or who have a service-connected disability as defined in Section 101(16) of Title 38, United States Code, or who are disabled in accordance with the definition of "non-service-connected" with respect to disability in Section 101(17) of Title 38, United States Code. For students meeting this requirement, a grantee receives the following additional payments:

(1) $150 per full-time student.

(2) $112.50 per three-quarter-time student.

(3) $75 per half-time student.

(20 U.S.C. 1070e-1(b))

§ 629.32 Allocation of funds.

(a) The maximum payment in any fiscal year to any institution of higher education, or any branch of that institution located in a different community is $75,000.

(20 U.S.C. 1070e-1(d)(2))

(b) The Secretary apportions funds which become available as a result of the limitation on payments described in paragraph (a) of this section so that all institutions to which VCIP payments are made receive a minimum payment of first up to $9,000, and then in excess of $9,000, to the extent that funds remain available. No grantee receives funds in excess of the amounts calculated according to § 629.31.

(c) The Secretary apportions appropriated funds so that each grantee receives one payment based on the grantee's enrollment data. When the appropriations are insufficient to make the maximum per student award as described in § 629.31, the Secretary reduces all institutions' payments on a prorata basis.

(d) If the Secretary deobligated funds originally obligated to an institution, the Secretary reallocates such funds proportionately to all grantee institutions.

(20 U.S.C. 1070e-1)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 629.41 Allowable expenditures.

(a) A grantee must use at least (1) 90 percent of its awarded funds or (2) the amount of funds needed to provide the services required by § 629.11(a), whichever is greater, to implement these services. If funds limited by such 90 percent remain after the grantee has provided such services, the grantee shall use such remaining funds to provide the services required by § 629.11(b). The grantee may use any remaining awarded funds solely to defray instructional expenses in academically related programs.

(b) A grantee may use VCIP funds to pay for travel expenditures only if the travel expenditures are incurred by the grantee in connection with recruitment and outreach activities, attendance at Department-sponsored meetings providing technical assistance, and attendance at Department-approved professional meetings.

(c) The grantee shall submit a proposed budget for the operation of the Office of Veterans' Affairs to the Secretary within 90 days of receipt of notice of its award.

(20 U.S.C. 1070e-1)

PART 630—FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION

Subpart A—General

Sec.
630.1 Fund for the Improvement of Postsecondary Education.
630.2 Eligible parties.
630.3 Types of awards.
630.4 Regulations that apply to this program.
630.5 Definitions that apply to this program.

Subpart B—Projects the Secretary Assists under This Program

630.11 Types of competition.
630.12 Annual priorities.

Subpart C—How to Apply for Assistance

630.21 Annual announcement.

Subpart D—How the Secretary Makes an Award

630.31 How the Secretary evaluates an application.
630.32 Selection criteria.
630.33 State comment.
630.34 Other information and materials.

Authority: Title X of the Higher Education Act of 1965, as amended by section 1001 of the Education Amendments of 1980, Pub. L. 96-374, 20 U.S.C. 1135, *et seq.*, unless otherwise specified.

Source: 47 FR 15552, Apr. 9, 1982, unless otherwise noted.

Subpart A—General

§ 630.1 Fund for the Improvement of Postsecondary Education.

The purpose of the Fund is to assist educational institutions and agencies in improving postsecondary educational opportunities.

(20 U.S.C. 1135)

§ 630.2 Eligible parties.

Institutions of postsecondary education, a combination of institutions of postsecondary education, and other public and private educational institutions and agencies are eligible to receive an award.

(20 U.S.C. 1135)

§ 630.3 Types of awards.

(a) The Secretary awards grants and cooperative agreements under this program based on the evaluation procedures established.

(b) The Secretary does not make grants to an educational institution or agency other than a nonprofit or public institution or agency.

(c) The Secretary will incorporate additional conditions into each cooperative agreement awarded relating to the substantial involvement of the Government in the project.

(20 U.S.C. 1135, 1135a-2, 3474; 41 U.S.C. 505)

§ 630.4 Regulations that apply to this program.

(a) The following regulations apply to applicants for and recipients of grants and cooperative agreements under this part:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions), and Part 78 (Education Appeal Board).

(2) The regulations in this Part 630.

(b) The following provisions of EDGAR do not apply to this program:

(1) Section 75.201(a) (unweighted selection criteria);

(2) Section 75.202 through 75.206 (selection criteria); and

(3) Section 75.217(a)(2) (three or more persons to review applications).

(20 U.S.C. 1135, 1135a-2, 3474; 41 U.S.C. 505)

§ 630.5 Definitions that apply to this program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant.
Application.
Award.
Department.
EDGAR.
Grant.
Nonprofit.
Preapplication.
Private.
Project.
Public.
Secretary.

(b) *Definitions that apply to this part:* The following definitions apply to this part:

"Combination of institutions of postsecondary education" means a group of institutions of postsecondary education that have entered into a joint arrangement for the purpose of carrying out a common objective, or a public or nonprofit private agency, organization, or institution designated or created by a group of institutions of postsecondary education for the purpose of carrying out a common objective on their behalf.

"Cooperative agreement" means an assistance relationship in which substantial Federal involvement is anticipated.

"Educational institution or agency" means an entity that is either engaged in activities involving education or has jurisdiction over educational matters pursuant to State or local law.

"Fund" means the Fund for the Improvement of Postsecondary Education, the unit within the Department that administers the program covered by this part.

(20 U.S.C. 1135, 1141, 3474, 41 U.S.C. 505)

Subpart B—Projects the Secretary Assists Under This Program

§ 630.11 Types of competitions.

The Secretary accepts applications for assistance in two program competition categories described in this section. Each year the Secretary announces, as described in § 630.21, the types of competitions to be conducted and the information required for submitting and reviewing preapplications, when applicable. (See EDGAR §§ 75.130 through 75.134)

(a) *The Comprehensive Program Competition.* In this competition, the Secretary supports a broad range of projects that respond to immediate problems or issues in a variety of categories and that seek to improve postsecondary educational opportunities. The Secretary requires the submission of preapplications by applicants under this competition.

(b) *Targeted Competitions.* In these competitions, the Secretary focuses on one or several problem areas or improvement approaches in postsecondary education. Preapplications may be required of applicants under these competitions. The targeted competitions may include, for example—

(1) Special Focus competitions, in which the Secretary supports projects addressing a particular problem area or improvement approach in postsecondary education;

(2) National Project competitions, in which the Secretary supports projects addressing a particular problem area or improvement approach in postsecondary education. Grantees under National Project competitions shall collaborate in disseminating project results;

(3) Network competitions, in which the Secretary supports projects that bring together educational practitioners in a particular area of concern in a continuing association to improve practice in that area;

(4) Final Year Dissemination competitions, in which the Secretary supports efforts by grantees of the Fund to disseminate project ideas and results. Applicants in these competitions are limited to grantees of the Fund whose projects are in their final year of funding, except that a recipient of a single-year grant may apply for assistance under this competition within one year following the termination of its project; or

(5) Practitioner Scholars competitions, in which the Secretary supports efforts by postsecondary educational practitioners to contribute to knowledge about postsecondary education or to the improvement of postsecondary education by producing a document or other product or by engaging in an activity designed to share the practitioner's knowledge with others.

(20 U.S.C. 1135)

§ 630.12 Annual priorities.

(a) Each year the Secretary announces, as described in § 630.21, the program priorities applicable to each competition to be conducted that year and the method that will be used in applying the selected priorities.

(b) Program priorities describe problem areas or improvement approaches in postsecondary education and may include, for example—

(1) Increasing the availability of high quality programs for all postsecondary students by developing educational programs and services that allow currently enrolled students from groups previously excluded from postsecondary educational participation to complete their educational goals;

(2) Expanding professional education and employment for racial or ethnic minorities and women by increasing access to postsecondary educational institutions at the graduate level and by increasing employment opportunities within postsecondary educational institutions for these populations;

(3) Expanding learning opportunities for the full-time worker by developing new educational programs and services for workers;

(4) Increasing the use of active modes of learning by using educational processes, such as internships, self-directed learning, learning groups, and interactive electronic technologies, that allow learners to take greater responsibility for their own learning;

(5) Enhancing the knowledge and abilities of postsecondary students by developing new or redefined curricular content and educational subject matters; and

(6) Improving leadership for new educational circumstances by encouraging efforts to renew and implement the educational missions of individual institutions or systems of institutions and to improve the management of postsecondary educational institutions;

(7) Establishing institutions and programs using the technology of communications;

(8) Improving graduate education, the instruction of academic professions, and the recruitment and retention of faculties; and

(9) Creating new institutions and programs for examining and awarding credentials to individuals, and reforming current institutional practices related to credentials.

(c) Under the Comprehensive Program competition, projects that do not address a priority are eligible for support if they address other significant problems in postsecondary education.

(20 U.S.C. 1135, 1135a-2, 3474)

Subpart C—How To Apply for Assistance

§ 630.21 Annual announcement.

Each year the Secretary announces in one or more application notices published in the FEDERAL REGISTER, the following:

(a) The types of competitions to be conducted (see § 630.11).

(b) Those competitions requiring preapplications and information about the submission and review of preapplications (see § 630.11).

(c) Program priorities selected for each competition and the methods that will be used in applying the selected priorities (see § 630.12).

(d) Selection criteria applicable to each competition and the methods that will be used in applying these criteria (see § 630.32).

(e) Those competitions in which other information or additional materials may be requested or required of applicants after applications have been submitted, and the kind of information or additional materials to be requested or required (see § 630.34).

(20 U.S.C. 1135, 1135a-2, 3474)

Subpart D—How the Secretary Makes an Award

§ 630.31 How the Secretary evaluates an application.

On the basis of the applicable selection criteria in § 630.32, the Secretary evaluates a preapplication or application. Any comments and recommendations received from State commissions as described in § 630.33, and other information requested or additional materials requested or required in accordance with § 630.34, may also be used in evaluating applications.

(20 U.S.C. 1135, 1135a-1, 1135a-2, 3474)

§ 630.32 Selection criteria.

Each year, in accordance with § 630.21, the Secretary announces the selection criteria that apply to each competition to be conducted that year. The selection criteria will be drawn from the criteria listed in paragraphs (a) through (c) of this section.

Each year, in accordance with § 630.21, the Secretary also announces the methods that the Secretary will use in applying the selection criteria in each competition. In applying the selection criteria, the Secretary first analyzes each application in terms of individual selection criteria, or groups of criteria, which may be given equal importance or ranked according to relative importance. The Secretary then makes a final evaluation based on an overall assessment of the extent to which each application satisfactorily addresses the applicable selection criteria.

(a) *Significance for Postsecondary Education.* The Secretary reviews each proposed project for its significance in improving postsecondary education by determining the extent to which it would—

(1) Achieve the purposes of the particular program competition as referenced in § 630.11;

(2) Address the program priorities for the particular program competition;

(3) Address an important problem or need;

(4) Represent an improvement upon, or important departure from, existing practice;

(5) Involve learner-centered improvements;

(6) Achieve far-reaching impact through improvements that will be useful in a variety of ways and in a variety of settings; and

(7) Increase the cost-effectiveness of services.

(b) *Feasibility.* The Secretary reviews each proposed project for its feasibility by determining the extent to which—

(1) The proposed project represents an appropriate response to the problem or need addressed;

(2) The applicant is capable of carrying out the proposed project, as evidenced by, for example—

(i) The applicant's understanding of the problem or need;

(ii) The quality of the project design, including objectives, approaches, and evaluation plan;

(iii) The adequacy of resources, including money, personnel, facilities, equipment, and supplies;

(iv) The qualifications of key personnel who would conduct the project; and

(v) The applicant's relevant prior experience;

(3) The applicant and any other participating organizations are committed to the success of the proposed project, as evidenced by, for example—

(i) Contribution of resources by the applicant and by participating organizations;

(ii) Their prior work in the area; and

(iii) The potential for continuation of the proposed project beyond the period of funding (unless the project would be self-terminating);

(4) The activities of the project, if funded under a National Project competition, would contribute to a collaboration among other grantees under that competition; and

(5) The proposed project demonstrates potential for dissemination to or adaptation by other organizations, and shows evidence of interest by potential users.

(c) *Appropriateness of funding projects.* The Secretary reviews each application to determine whether support of the proposed project by the Secretary is appropriate in terms of the availability of other funding sources for the proposed activities.

(20 U.S.C. 1135, 1135a-2, 3474)

§ 630.33 State comment.

The Secretary does not make an award for a project to a postsecondary institution applicant until the Secretary has afforded each appropriate State entity having an agreement under section 1203 of the Higher Education Act of 1965, an opportunity to submit its comments and recommendations on the application to the Secretary.

(20 U.S.C. 1135a-1)

§ 630.34 Other information or materials.

Under some competitions in § 630.11, the Secretary may request other information or request or require additional materials after applications have been submitted. The information or additional materials requested or required are relevant to applicable criteria or priorities and are reviewed to verify or clarify information about projects or applicants in the Secretary's final evaluation of applications having equal merit. The Secretary may request or require interviews, references, or samples of written materials. Each year the Secretary announces, as described in § 630.21, those competitions in which other information may be requested or required, and lists the kind of information or additional materials that may be requested or required.

(20 U.S.C. 1135, 1135a-2, 3474)

PART 631—COOPERATIVE EDUCATION PROGRAM—GENERAL

Subpart A—General

Sec.

631.1 The Cooperative Education Program.
631.2 Regulations that apply to the Cooperative Education Program.
631.3 Definitions that apply to the Cooperative Education Program.

Subpart B—Projects the Secretary Assists Under This Program

631.10 General.
631.11 Administration projects.
631.12 Demonstration and exploration projects.
631.13 Research projects.
631.14 Training projects.

Subpart C—How To Apply for a Grant

631.20 Limitation on number of applications.
631.21 Application information.

Subpart D—How the Secretary Makes a Grant

631.30 How the Secretary makes a grant.
631.31 Evaluation of applications from combinations of institutions of higher education.
631.32 Minimal acceptable score.

Subpart E—Conditions That Must Be Met by a Grantee

631.40 Allowable costs.
631.41 Unallowable costs.

AUTHORITY: Title VIII of the Higher Education Act of 1965, as amended (20 U.S.C. 1133-1133b), unless otherwise noted.

SOURCE: 47 FR 17253, Apr. 21, 1982, unless otherwise noted.

Subpart A—General

§ 631.1 The Cooperative Education Program.

The Cooperative Education Program provides Federal financial assistance to help institutions of higher education offer students paid work experiences closely related to their academic and career pursuits, and to provide for specialized training and research to improve the effectiveness of programs of Cooperative Education.

(20 U.S.C. 1133)

§ 631.2 Regulations that apply to the Cooperative Education Program.

The following regulations apply to the Cooperative Education Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (Definitions).

(b) The regulations in this Part 631.

(c) The regulations in the following parts, as applicable:

(1) 34 CFR Part 632—Cooperative Education—Administration Projects.

(2) 34 CFR Part 633—Cooperative Education—Demonstration and Exploration Projects.

(3) 34 CFR Part 634—Cooperative Education—Research Projects.

(4) 34 CFR Part 635—Cooperative Education—Training Projects.

(20 U.S.C. 1221e-3(a)(1), 1133)

§ 631.3 Definitions that apply to the Cooperative Education Program.

(a) *Definitions in EDGAR.* The following terms used in 34 CFR Parts 631 through 635 are defined in 34 CFR Part 77:

Applicant
Application
Contract
EDGAR
Equipment
Grant
Grantee
Nonprofit
Private
Project
Project period
Public
Secretary
State

(b) *Definitions that apply to the Cooperative Education Program.* The following definitions apply to terms used in 34 CFR Parts 631 through 635:

"Act" means Title VIII of the Higher Education Act of 1965, as amended.

"Alternating periods of study and employment" means rotating periods of classroom study by, and supervised employment of, a student in a Cooperative Education project.

"Combination of institutions of higher education" means a group consisting of institutions of higher education that have entered into a cooperative arrangement for the purpose of carrying out a common objective.

"Comprehensive Cooperative Education project" means a Cooperative Education project in an institution of higher education that—

(1) Expands an existing program of Cooperative Education into all or nearly all of the academic disciplines or departments of the institution;

(2) Serves, to the extent possible, a diverse student population, as described in 34 CFR 75.111;

(3) Enables students to participate in work experiences with a variety of employers; and

(4) Acts as a liaison between high schools and the institution's admissions office to inform high school students of the availability and advantages of Cooperative Education.

"Cooperative Education" means an educational approach that provides alternating or parallel periods of classroom study and public or private employment in which—

(1) There is a formal agreement among the institution of higher education, the student, and the employer;

(2) The rotation between academic study and work is structured to further the student's education and employability;

(3) The work experience is related to the student's academic study or career goals, so far as practicable;

(4) The student's work experience is supervised and evaluated; and

(5) The student is employed and compensated in conformity with Federal, State, and local laws.

"Institution of higher education" means an educational institution as defined in Section 1201(a) of the Higher Education Act of 1965, as amended, but does not include any institution that does not meet the provision of clause (3) of Section 1201(a).

"Parallel periods of study and employment" means periods of both classroom study by, and supervised employment of, a student in a Cooperative Education project, with the study and employment having nearly equal significance during the course of the same school day or the school week.

"Student" means a person—

(1) Enrolled in an institution of higher education other than by correspondence;

(2) Enrolled in a degree program of not fewer than two years; and

(3) Carrying at least half the academic workload normally required of persons who are full-time degree candidates.

"Unit of an institution of higher education."

(1) This term means the organizational entity that has the final, noncentral administrative authority to recommend or administer the requirements, standards, and credits necessary to earn academic degrees.

(2)(i) In a university, unit means a college or its equivalent within the university.

(ii) In a four-year college, unit means a school or its equivalent within the college.

(iii) In a two-year college, unit means a department or division, whichever is the higher level, within the college.

(20 U.S.C. 1221e-3(a)(1), 1133-1133b)

Subpart B—Projects the Secretary Assists Under This Program

§ 631.10 General.

Under the Cooperative Education Program the Secretary awards grants for four types of projects:

(a) Administration projects.

(b) Demonstration and exploration projects.

(c) Research projects.

(d) Training projects.

(20 U.S.C. 1133-1133b)

§ 631.11 Administration projects.

(a) Administration projects are designed to enrich the quality of higher education by providing students with paid work experiences related, to the extent practicable, to the student's academic or occupational objectives.

(b) The purpose of the work experiences is to enable students to—

(1) Gain knowledge that better prepares them to achieve their career objectives; and

(2) Earn funds needed for educational expenses.

(20 U.S.C. 1133a)

§ 631.12 Demonstration and exploration projects.

(a) Demonstration projects are comprehensive Cooperative Education projects designed to demonstrate the feasibility of expanding Cooperative Education in an institution to encompass—

(1) Nearly all academic departments or disciplines; and

(2) A significant majority of a diverse student population.

(b) Exploration projects are projects designed to explore the feasibility of instituting innovative methods for carrying out Cooperative Education projects—

(1) In various geographic settings or in various types and sizes of institutions;

(2) To meet the special problems or needs of special populations; or

(3) Both.

(20 U.S.C. 1133b)

§ 631.13 Research projects.

Research projects have broad implications for an application to the entire Cooperative Education community—including, but not limited to, students, institutions, and employers—rather than application to the immediate needs of an individual institution of higher education.

(20 U.S.C. 1133b)

§ 631.14 Training projects.

Training projects offer a variety of activities and experiences—

(a) Designed to carry out one or more of the types of training specified in 34 CFR 635.10; and

(b) Directed to individuals who participate or are interested in participating in the planning, establishment, administration, or coordination of Cooperative Education projects.

(20 U.S.C. 1133b)

Subpart C—How to Apply for a Grant

§ 631.20 Limitation on number of applications.

In any year, the Secretary evaluates from the same applicant no more than one application under each of the four types of projects listed in § 631.10.

(20 U.S.C. 1221e-3(a)(1), 1133-1133b)

§ 631.21 Application information.

In addition to the information specified in 34 CFR 75.107, an application must contain a detailed narrative budget for each year of the proposed project period, including, where applicable—

(a) The purposes of staff travel; and

(b) The reasons for the use of consultants.

(20 U.S.C. 1221e-3(a)(1), 1133a, 1133b)

Subpart D—How the Secretary Makes a Grant

§ 631.30 How the Secretary makes a grant

(a) The Secretary evaluates an application on the basis of the selection criteria located in the appropriate part governing the component under which an application is made.

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses following the title of that criterion in 34 CFR 632.30, 633.30, 633.31, 634.30, or 635.30, as applicable.

(20 U.S.C. 1221e-3(a)(1), 1133-1133b)

§ 631.31 Evaluation of applications from combinations of institutions of higher education.

(a) The Secretary evaluates an application from a combination of institutions of higher education as a single application.

(b) The Secretary does not give member institutions of a group individual scores for the applicable selection criteria.

(20 U.S.C. 1221e-3(a)(1), 1133-1133b)

§ 631.32 Minimal acceptable score.

The Secretary does not give further consideration for funding to any application that receives an average score of 50 points or less from the panel of experts in the review process conducted in accordance with 34 CFR 75.217.

(20 U.S.C. 1221e-3(a)(1), 1133-1133b)

Subpart E—Conditions That Must Be Met by a Grantee

§ 631.40 Allowable costs.

Consistent with the terms of 34 CFR 75.530, governing allowable costs, a grantee may pay from its grant the costs of—

(a) Release time (that is, time in which a faculty member is freed from his or her normal teaching load to serve the project) or overload time (that is, time beyond a faculty member's normal teaching load at that institution) to faculty who assist the project in such activities as—

(1) Student counseling and assessment of students' progress in work experiences that are part of the project;

(2) Job development, location, and placement; or

(3) Promotional activities for Cooperative Education.

(b) Conducting Cooperative Education seminars or courses for students.

(c) Student travel, if a student is a member of an advisory board for the project.

(d) Fees, per diem expenses, and travel costs of consultants and trainers.

(e) Per diem expenses and travel costs of unpaid consultants, such as key personnel of other Cooperative Education projects.

(f) In-service training related to Cooperative Education.

(g) Registration for training sessions sponsored by the Cooperative Education Program.

(h) Developing, printing, and disseminating materials related to the project, including material designed to recruit into the project students from the enrolled student body, and films, audio-visual materials, and other illustrative materials for classroom use.

(i) Compensating graduate students who serve as research assistants.

(20 U.S.C. 1221e-3(a)(1), 1133-1133b)

§ 631.41 Unallowable costs.

In addition to those costs disallowed under 34 CFR 75.519 and 34 CFR 75.530 through 75.533, a grantee may not use its grant to pay for the following:

(a) Compensation or expenses of students enrolled in the Cooperative Education project.

(b) Teaching salaries for academic courses.

(c) Consultant fees or honoraria to key personnel—such as directors, coordinators, job developers, job locators, and career counselors—who are—

(1) Involved in carrying out the objectives of a Cooperative Education project;

(2) Salaried, in whole or in part, under the Cooperative Education Program, or any other Federal program; or

(3) Both.

(d) Purchase or lease of equipment, unless specifically authorized by the Secretary.

(e) Recruitment activities to encourage students to enroll in the grantee institution.

(f) Computer usage and materials—such as pre-programmed materials, purchase of computer time, programming, and rental of terminals for the project—unless specifically approved by the Secretary.

(g) Individual membership fees in professional organizations.

(h) Institutional membership fees in organizations that devote a substantial part of their activities to influencing the passage or defeat of legislation.

(20 U.S.C. 1221e-3(a)(1), 1133-1133b)

PART 632—COOPERATIVE EDUCATION PROGRAM—ADMINISTRATION PROJECTS

Subpart A—General

Sec.
632.1 The Cooperative Education Program—Administration Projects.
632.2 Eligible applicants.
632.3 Eligible students.

Subpart B—Projects the Secretary Assists Under This Program

632.10 Eligible projects.

Subpart C—How to Apply for a Grant

632.20 Application information.

Subpart D—How the Secretary Makes a Grant

632.30 Selection criteria the Secretary uses.
632.31 Extent of Federal support.
632.32 Limit on years of participation.

Subpart E—Conditions That Must Be Met by a Grantee

632.40 Fiscal requirements.

Subpart F—Administrative Responsibilities of a Grantee

632.50 Frequency and duration of work experiences.
632.51 Assessment of a student's progress.
632.52 In-service training.

AUTHORITY: Title VIII of the Higher Education Act of 1965, as amended (20 U.S.C. 1133-1133a), unless otherwise noted.

SOURCE: 47 FR 17255, Apr. 21, 1982, unless otherwise noted.

Subpart A—General

§ 632.1 The Cooperative Education Program—Administration Projects.

Administration projects are described in 34 CFR 631.11.

(20 U.S.C. 1133a)

§ 632.2 Eligible applicants.

The following are eligible to apply for grants under this part:

(a) Institutions of higher education.

(b) Combinations of institutions of higher education.

(20 U.S.C. 1133a)

§ 632.3 Eligible students.

To participate in a Cooperative Education project funded under this part, an individual must meet the definition of the term "student" in 34 CFR 631.3(b).

(20 U.S.C. 1221e-3(a)(1), 1133a)

Subpart B—Projects the Secretary Assists Under This Program

§ 632.10 Eligible projects.

The Secretary makes awards under this part for Cooperative Education projects in which students engage in alternating or parallel periods of study and employment.

(20 U.S.C. 1133a)

Subpart C—How To Apply for a Grant

§ 632.20 Application information.

In addition to the provisions specified in 34 CFR 631.21 an applicant must provide the following:

(a) A list of the units of the institution of higher education.

(b) The number of years each unit has received prior funding for an administration project under Title VIII or under the former Title IV, Part D, of the Higher Education Act of 1965, the predecessor of Title VIII.

(20 U.S.C. 1221e-3(a)(1), 1133a)

Subpart D—How the Secretary Makes a Grant

§ 632.30 Selection criteria the Secretary uses.

The Secretary uses the following criteria in evaluating applications for grants under this part.

(a) *Plan of operation.* (10 points) (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally under represented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Involvement in planning and implementation.* (4 points) The Secretary reviews each application for information that shows the extent to which and the manner in which the applicant has involved administrators, faculty, students, employers, and Cooperative Education specialists in planning and—if a Cooperative Education project is already in existence—in carrying out the project for which funds are requested.

(c) *Expansion of Cooperative Education.* (10 points) The Secretary reviews each application for information that shows the extent to which and the manner in which the applicant has used or will use its own resources to increase the size, scope, and quality of its Cooperative Education project during the period of Federal support.

(d) *Curriculum and calendar adaptability.* (5 points) The Secretary reviews each application for information that shows the extent to which the applicant has modified or will modify its schedule of courses as necessary to meet the particular needs of students in the proposed project.

(e) *Supervision of students.* (4 points) The Secretary reviews each application for information that shows the extent and quality of the supervision students will receive from the grantee or employer during the work experiences.

(f) *Recordkeeping.* (3 points) The Secretary reviews each application for information that shows the extent to which the applicant has developed or will develop a recordkeeping system that documents each student's status, while enrolled in the Cooperative Education project.

(g) *Quality of key personnel.* (7 points) (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director or principal investigator;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages, applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine personnel qualifications, the Secretary considers evidence of past experinece and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(h) *Budget and cost effectiveness.* (5 points) (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(i) *Evaluation plan.* (5 points) (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(See 34 CFR 75.590—Evaluation by the grantee)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(j) *Adequacy of resources.* (3 points) (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(k) *Institutional commitment.* (19 points) The Secretary reviews each application for evidence that shows—

(1) The applicant has a written Cooperative Education philosophy appropriate to the needs and characteristics of the applicant and has a clear understanding of the Title VIII Cooperative Education Program;

(2) The extent to which and the manner in which the principal administrators of the applicant have supported or are likely to support the proposed project; and

(3) The applicant demonstrates its intention and ability to continue Cooperative Education at the same or an increased level after Federal financial assistance ends.

(l) *Work experiences.* (10 points) (1) The Secretary reviews each application for information that describes the work experiences that will be provided by the project.

(2) The Secretary looks for information that shows—

(i) The extent to which the applicant has arranged for a sufficient number of employment opportunities that are related to the educational, professional, or occupational objectives of students involved or to be involved in the project;

(ii) That the number, frequency, length, and quality of the work experiences are sufficient to make a significant contribution toward meeting the educational, professional, and occupational objectives of the student's involved or to be involved in the project; and

(iii) The extent to which the applicant will develop, promote, and monitor close relationships between the students' work experiences and their academic studies.

(m) *Employer acceptance.* (15 points) The Secretary reviews each application for evidence that shows the extent to which employers have provided or will provide opportunities for work and career development related to the academic disciplines of students involved or to be involved in the project.

(20 U.S.C. 1221e-3(a)(1), 1133a)

§ 632.31 Extent of Federal support.

(a) If the Secretary selects a project for assistance under this part, the Secretary awards Federal funds that do not exceed the following:

(1) One hundred percent of the total project cost in the first fiscal year for which an award is made.

(2) Ninety percent of the total project costs in the second fiscal year for which an award is made.

(3) Eighty percent of the total project cost in the third fiscal year for which an award is made.

(4) Sixty percent of the total project cost in the fourth fiscal year for which an award is made.

(5) Thirty percent of the total project cost in the fifth fiscal year which an award is made.

(b) If an applicant has previously received funds under this part for the applicant as a whole or for a unit of the the applicant, the Secretary, in computing the maximum possible Federal share of an award, counts as one year each previous fiscal year for which an award was made to the applicant or unit.

(20 U.S.C. 1133a)

§ 632.32 Limit on years of participation.

A unit of an institution of higher education, individually or as a participant in a combination of institutions of higher education, may not receive funding under this part for more than five fiscal years.

(20 U.S.C. 1133a)

Subpart E—Conditions That Must Be Met by a Grantee

§ 632.40 Fiscal requirements.

A grantee shall expend for its Cooperative Education project during the fiscal year in which a grant is received not less than the amount the grantee expended from non-Federal funds for its project during the previous fiscal year for which Federal funds were received.

(20 U.S.C. 1133a)

Subpart F—Administrative Responsibilities of a Grantee

§ 632.50 Work experiences.

(a) A Cooperative Education project in an institution of higher education must provide to participating students work experiences which, to the extent practicable, relate to the student's program of academic study and career or occupational objectives.

(b) The work experiences provided under paragraph (a) of this section must—

(1) Be of a duration consistent with the grantee's academic calendar; and

(2) Provide sufficient opportunities for each student to gain in-depth experience in an area related to his or her academic or career goals.

(20 U.S.C. 1133a)

§ 632.51 Assessment of a student's progress.

During a student's work experience, a grantee shall assess the student's progress to ensure that the work experience satisfies the objectives of the student and the Cooperative Education Program.

(20 U.S.C. 1221e-3(a)(1), 1133a)

§ 632.52 In-service training.

A grantee shall ensure that the staff of its Cooperative Education project has an opportunity to participate in training that will enable the staff to—

(a) Operate the project more effectively; and

(b) Develop the expertise to expand and continue the Cooperative Education project.

(20 U.S.C. 1221e-3(a)(1), 1133a)

PART 633—COOPERATIVE EDUCATION PROGRAM—DEMONSTRATION AND EXPLORATION PROJECTS

Subpart A—General

Sec.

633.1 The Cooperative Education Program—Demonstration and Exploration Projects.
633.2 Eligible applicants.
633.3 Eligible students.

Subpart B—Projects the Secretary Assists Under This Program

633.10 Eligible projects.

Subpart C—[Reserved]

Subpart D—How the Secretary Makes a Grant

633.30 Selection criteria the Secretary uses for demonstration projects.
633.31 Selection criteria the Secretary uses for exploration projects.

Subpart E—Conditions That Must Be Met by a Grantee

633.40 Status of project director.

Subpart F—Administrative Responsibilities of a Grantee

633.50 Administrative requirements.

AUTHORITY: Title VIII of the Higher Education Act of 1965, as amended (20 U.S.C. 1133, 1133b), unless otherwise noted.

SOURCE: 47 FR 17257, Apr. 21, 1982, unless otherwise noted.

Subpart A—General

§ 633.1 The Cooperative Education Program—Demonstration and Exploration Projects.

Demonstration and exploration projects are described in 34 CFR 631.12.

(20 U.S.C. 1221e-3(a)(1), 1133b)

§ 633.2 Eligible applicants.

The following are eligible to apply for grants under this part:

(a) Institutions of higher education.

(b) Combinations of institutions of higher education.

(20 U.S.C. 1133b)

§ 633.3 Eligible students.

To participate in a Cooperative Education project funded under this part, an individual must meet the definition of the term "student" in 34 CFR 631.3(b).

(20 U.S.C. 1221e-3(a)(1), 1133b)

Subpart B—Projects the Secretary Assists Under This Program

§ 633.10 Eligible projects.

Demonstration and exploration projects are described in 34 CFR 631.12.

(20 U.S.C. 1133b)

Subpart C—[Reserved]

Subpart D—How the Secretary Makes a Grant

§ 633.30 Selection criteria the Secretary uses for demonstration projects.

The Secretary uses the following selection criteria in evaluating applications for demonstration grants under this part:

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally under-represented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Planning for a demonstration project.* (6 points). The Secretary reviews each application for information that shows the extent to which the applicant has conducted the necessary initial planning for the project.

(c) *Integration of the demonstration project.* (25 points)

(1) The Secretary reviews each application for information that shows the extent of the action taken, or to be taken, by administrators and faculty to integrate the project into the academic policies, programs, and objectives of the institution.

(2) The Secretary looks for information that shows the extent to which the schedule for incorporating the project into the academic policies, programs, and objectives of the institution, including the rationale and procedures associated with each activity, will result in changes, if any in—

(i) The organizational structure of the applicant;

(ii) The curricula to meet the needs of students participating in Cooperative Education;

(iii) The academic calendar;

(iv) The awarding of credits;

(v) Increased faculty involvement;

(vi) Increased employer involvement;

(vii) Counseling techniques; and

(viii) Supervision of students during their work experiences.

(d) *Quality of key personnel.* (7 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director or principal investigator;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine personnel qualifications, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(e) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(g) *Adequacy of resources.* (3 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(h) *Continuing support.* (15 points)

(1) The Secretary reviews each application for information that shows the applicant will continue the comprehensive Cooperative Education project after Federal financial assistance ends.

(2) The Secretary looks for information that shows—

(i) The amount of funds and resources (other than personnel) that will be committed to provide Cooperative Education in all or nearly all academic departments or disciplines in the institution; and

(ii) The extent to which the faculty and other staff will provide academic and career counseling to increase the participation in Cooperative Education of students in all or nearly all academic departments or disciplines.

(i) *Employer support.* (10 points)

(1) The Secretary reviews each application for information that shows employer support for the project.

(2) The Secretary looks for information that shows commitments by employers to—

(i) Maintain or increase the number of students they accept for work experiences; and

(ii) Accept students from a variety of academic departments or disciplines.

(j) *Commitment to Cooperative Education.* (4 points) The Secretary reviews each application for evidence that shows the extent to which the institution has developed a written philosophy of Cooperative Education that—

(1) Is reflected in the applicant's mission statement (that is, a broad statement of the applicant's fundamental purpose); and

(2) Clearly supports the expansion of Cooperative Education throughout the institution as described in 34 CFR 631.12.

(k) *Work experiences.* (10 points)

(1) The Secretary reviews each application for information that describes the work experiences that will be provided by the project.

(2) The Secretary looks for information that shows—

(i) The extent to which the applicant has arranged for a sufficient number of employment opportunities that are related to the educational, professional, or occupational objectives of students involved or to be involved in the project;

(ii) That the number, frequency, length, and quality of the work experiences are sufficient to make a significant contribution toward meeting the educational, professional, or occupational objectives of the students involved or to be involved in the project; and

(iii) The extent to which the applicant will develop, promote, and monitor close relationships between the students' work experiences and their academic studies.

(20 U.S.C. 1221e-3(a)(1), 1133(b))

§ 633.31 Selection criteria the Secretary uses for exploration projects.

The Secretary uses the following criteria in evaluating applications for exploration grants under this part.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally under-represented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Planning for an exploration project.* (10 points) The Secretary reviews each application for information that shows the extent to which the applicant has conducted the necessary initial planning for the project, including the extent to which the plan for implementing the project has been accepted by the—

(1) Responsible officials of the institution;

(2) Faculty;

(3) Employers; and

(4) Students.

(c) *Quality of key personnel.* (7 points)

(1) The Secretary reviews each application for information that shows

the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualification of the project director or principal investigator;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine pesonnel qualifications, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(g) *Need for the exploration project.* (20 points) The Secretary reviews each application for a substantive explanation of the need for the exploration project.

(h) *Innovation.* (15 points) The Secretary reviews each application to determine the extent to which the applicant demonstrates an innovative or unique approach to Cooperative Education and relevance of the exploration project to institutions, students, and employers involved or interested in Cooperative Education.

(i) *Employer support.* (13 points) The Secretary reviews each application for evidence that shows the extent of employer support for the development of the exploration project.

(j) *Work experiences.* (10 points)

(1) The Secretary reviews each application for information that describes the work experiences that will be provided by the project.

(2) The Secretary looks for information that shows—

(i) The extent to which the applicant has arranged for a sufficient number of employment opportunities that are related to the educational, professional or occupational objectives of students involved or to be involved in the project;

(ii) That the number, frequency, length, and quality of the work experiences are sufficient to make a significant contribution toward meeting the educational, professional, or occupational objectives of the students involved or to be involved in the project; and

(iii) The extent to which the applicant will develop, promote, and monitor close relationships between the students' work experiences and their academic studies.

(20 U.S.C. 1221e-3(a)(1), 1133b)

Subpart E—Conditions That Must Be Met by a Grantee

§ 633.40 Status of project director.

In addition to the requirements of 34 CFR 75.510, the director of a demonstration project shall be full-time. The Secretary, however, may waive the full-time requirement, as specified in 34 CFR 75.511.

(20 U.S.C. 1221e-3(a)(1), 1133b)

Subpart F—Administrative Responsibilities of a Grantee

§ 633.50 Administrative requirements.

A grantee under this part shall meet all requirements in 34 CFR 632.50 through 632.52.

(20 U.S.C. 1221e-3(a)(1), 1133b)

PART 634—COOPERATIVE EDUCATION PROGRAM—RESEARCH PROJECTS

Subpart A—General

Sec.

634.1 The Cooperative Education Program—Research Projects.
634.2 Eligible applicants.

Subpart B—Projects the Secretary Assists Under This Program

634.10 Eligible projects.

Subpart C—[Reserved]

Subpart D—How the Secretary Makes a Grant

634.30 Selection criteria the Secretary uses.
634.31 Priority areas for research.

Subparts E–F—[Reserved]

AUTHORITY: Title VIII of the Higher Education Act of 1965, as amended (20 U.S.C. 1133, 1133b), unless otherwise noted.

SOURCE: 47 FR 17259, Apr. 21, 1982, unless otherwise noted.

Subpart A—General

§ 634.1 The cooperative education program—research projects.

Research projects are described in 34 CFR 631.13.

(20 U.S.C. 1133b)

§ 634.2 Eligible applicants.

The following are eligible to apply for grants under this part:

(a) Institutions of higher education.

(b) Combinations of institutions of higher education.

(c) Public or private nonprofit agencies or organizations.

(20 U.S.C. 1133b)

Subpart B—Projects the Secretary Assists Under This Program

§ 634.10 Eligible projects.

The Secretary makes awards under this part for research projects dealing with, but not limited to, the following:

(a) Improving the operation of the Cooperative Education Program;

(b) Promoting the use of Cooperative Education as an alternative educational approach to assist students to prepare for careers and to finance their educational pursuits; and

(c) Developing better cooperation among high schools, institutions of higher education, business, and industry to enhance the opportunity for students to participate in work experiences related to their academic or career objectives.

(20 U.S.C. 1133b)

Subpart C—[Reserved]

Subpart D—How the Secretary Makes a Grant

§ 634.30 Selection criteria the Secretary uses.

The Secretary uses the following selection criteria in evaluating applications for grants under this part:

(a) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows

the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally under-represented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director or principal investigator;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine personnel qualifications, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (7 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (3 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Relevancy of research.* (20 points) The Secretary reviews each application for evidence that shows—

(1) The extent to which the applicant demonstrates that the proposed research is responsive to a major problem or need in Cooperative Education; and

(2) The extent to which the findings would be of value to institutions, students, or employers involved or interested in Cooperative Education.

(g) *Design of research.* (25 points) The Secretary reviews each application for evidence that shows the quality of the research design. The Secretary looks for—

(1) A clear description of the problem at which the research is directed;

(2) A well-defined hypothesis, if applicable;

(3) A clear description of research methods;

(4) The sampling method to be used, if applicable, including the size and proportion of the sample population to the universe of the population being studied; and

(5) A well-defined and organized plan for analyzing data.

(20 U.S.C. 1221e-3(a)(1), 1133b)

§ 634.31 Priority areas for research.

(a) The Secretary may, from time to time, select for priority funding research into one or more of the following:

(1) Identification and assessment of common elements in quality Cooperative Education projects.

(2) Measurement of factors influencing an institution of higher education to continue or not continue Cooperative Education after Federal financial assistance has ended.

(3) Assessment of the impact of factors that hinder or enhance—

(i) Student participation;

(ii) Faculty participation; or

(iii) Employer participation.

(4) Costs in relation to benefits of Cooperative Education, by identifying and assessing various methods of financing Cooperative Education.

(5) Longitudinal studies on former Cooperative Education students to determine the correlation between the students' Cooperative Education work experiences and one or more of the following:

(i) Initial job placement.

(ii) Job satisfaction.

(iii) Job advancement.

(6) Assessment of the impact of Cooperative Education on the retention and academic achievement of students participating in Cooperative Education.

(7) Assessment of the impact of a comprehensive Cooperative Education project on—

(i) Student at the institution;

(ii) Faculty;

(iii) Community resources; or

(iv) Employment opportunities.

(b) The Secretary announces subjects for priority funding, if any, in the annual application notice published in the FEDERAL REGISTER.

(20 U.S.C. 1221e-3(a)(1), 1133b)

Subparts E–F—[Reserved]

PART 635—COOPERATIVE EDUCATION PROGRAM—TRAINING PROJECTS

Subpart A—General

Sec.

635.1 The Cooperative Education Program—Training Projects.
635.2 Eligible applicants.
635.3 Eligible participants.

Subpart B—Projects the Secretary Assists Under This Program

635.10 Eligible projects.

Subpart C—[Reserved]

Subpart D—How the Secretary Makes a Grant

635.30 Selection criteria the Secretary uses.
635.31 Priorities for funding.
635.32 Geographic distribution.

Subpart E—[Reserved]

Subpart F—Administrative Responsibilities of a Grantee

635.50 Announcements of training sessions.

AUTHORITY: Title VIII of the Higher Education Act of 1965, as amended (20 U.S.C. 1133, 1133b), unless otherwise noted.

SOURCE: 47 FR 17260, Apr. 21, 1982, unless otherwise noted.

Subpart A—General

§ 635.1 The Cooperative Education Program—Training Projects.

Training projects are described in 34 CFR 631.14.

(20 U.S.C. 1133b)

§ 635.2 Eligible applicants.

The following are eligible to apply for grants under this part:

(a) Institutions of higher education.

(b) Combinations of institutions of higher education.

(c) Public or private nonprofit agencies or organizations.

(20 U.S.C. 1133b)

§ 635.3 Eligible participants.

Individuals with a need for training in the planning, establishment, administration, or coordination of programs of Cooperative Education are eligible to participate in training assisted under this part, including—

(a) Presidents and administrators of institutions of higher education, whether or not an institution administers a Federally funded Cooperative Education project.

(b) Faculty and staff of institutions of higher education, whether or not an institution administers a Federally funded Cooperative Education project.

(c) High school personnel responsible for career and academic guidance.

(d) Employers or prospective employers of students in a Cooperative Education project.

(e) Members of professional and scholarly organizations that participate or have an interest in Cooperative Education.

(20 U.S.C. 1133b)

Subpart B—Projects the Secretary Assists Under This Program

§ 635.10 Eligible projects.

(a) The Secretary makes awards under this part for training projects designed to develop skills necessary to administer Cooperative Education projects.

(b) Training projects may focus on, but are not limited to, the following:

(1) Responsibilities of directors or coordinators in administering Cooperative Education projects.

(2) Modification of teaching practices, academic calendars, and curricula.

(3) Relationships between work experiences and students' academic programs.

(4) Roles and responsibilities of employers and supervisors of students in Cooperative Education projects.

(5) Integration of Cooperative Education project into the academic programs and policies of institution of higher education.

(6) Placement, supervision, and evaluation of students in Cooperative Education work experiences.

(7) Placement and supervision of special student populations in work experiences under Cooperative Education projects.

(8) Cooperative Education for graduate students.

(9) Effective communications and relationships with regard to Cooperative Education within institutions, agencies, or organizations assisted under the Cooperative Education Program.

(10) Improving employer participation in Cooperative Education.

(11) Improving relations between institutions and the community with regard to Cooperative Education.

(12) Improving faculty attitudes toward and participation in Cooperative Education.

(13) Development of large-scale or comprehensive Cooperative Education projects.

(14) Planning, management, and evaluation of Cooperative Education projects.

(15) Improving the administration of Cooperative Education projects through the use of computers or other types of information systems.

(20 U.S.C. 1133b)

Subpart C—[Reserved]

Subpart D—How the Secretary Makes a Grant

§ 635.30 Selection criteria the Secretary uses.

The Secretary uses the following selection criteria in evaluating applications for grants under this part:

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Needs assessment.* (20 points) The Secretary reviews each application for information that shows the extent to which the applicant provides evidence of a need for—

(1) Training in its geographic area; or

(2) Training of a specialized nature addressed to a nationwide clientele.

(c) *Thoroughness of training design.* (10 points) The Secretary reviews each application for information that shows the extent to which the applicant provides evidence of thorough planning for the proposed project, including the procedures used in developing the design.

(d) *Scope of training.* (15 points) The Secretary reviews each application for evidence that shows the extent to which the proposed project will address the needs of the constituency selected to receive training, based on the use of needs analysis data.

(e) *Anticipated results.* (10 points) The Secretary reviews each application for evidence that shows the extent to which the proposed project has promise of fulfilling the proposed objectives identified in the needs assessment, training design, and scope of training.

(f) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director or principal investigator;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine personnel qualifications, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(g) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(h) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(i) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 1221e-3(a)(1), 1133b)

§ 635.31 Priorities for funding.

(a) The Secretary may, from time to time, select for priority funding training projects that focus on one or more of the subjects in paragraph (b) of this section. Each of the items in paragraph (b) incorporates one or more of the eligible projects listed in § 635.10.

(b) The Secretary may select one or more of the following as a funding priority:

(1) The development of appropriate skills to manage Cooperative Education projects effectively.

(2) The development of Cooperative Education demonstration and exploration projects.

(3) The development of student, faculty, and employer receptivity to Cooperative Education.

(4) The integration of programs of Cooperative Education into the academic programs and policies of institutions.

(5) The development of Cooperative Education trainers.

(6) The determination of costs and potential income benefits of Cooperative Education for various constituents of the Cooperative Education community.

(c) The Secretary announces subjects for priority funding, if any, in the annual application notice published in the FEDERAL REGISTER.

(20 U.S.C. 1221e-3(a)(1), 1133b)

§ 635.32 Geographic distribution.

Among applications of relatively equal quality, the Secretary may give priority to applications that ensure a wide geographic distribution throughout the United States of training projects funded under this part.

(20 U.S.C. 1221e-3(a)(1), 1133b)

Subpart E—[Reserved]

Subpart F—Administrative Responsibilities of a Grantee

§ 635.50 Announcements of training sessions.

All announcements inviting participants to training sessions must contain information that will fully describe eligibility requirements for participants, activities, anticipated results or skills to be acquired, and registration or other fees.

(20 U.S.C. 1221e-3(a)(1), 1133b)

PART 636—SUPPLEMENTAL FUNDS PROGRAM FOR COOPERATIVE EDUCATION

Subpart A—General

Sec.
636.1 Supplemental Funds Program for Cooperative Education.
636.2 Eligible grantees.
636.3 Regulations that apply to this program.
636.4 Definitions that apply to this program.

Subpart B—Activities the Secretary Assists Under This Program

636.10 Eligible activities.

Subpart C—How To Apply for a Grant

636.20 Application information.
636.21 Minimum award level.

Subpart D—How the Secretary Makes a Grant

636.30 Distribution of funds.

Subpart E—Conditions a Grantee Must Meet

636.40 Allowable costs.
636.41 Unallowable costs.

AUTHORITY: Title IV, Part C, of the Higher Education Act of 1965, as amended (42 U.S.C. 2752(d)), unless otherwise noted.

SOURCE: 47 FR 18853, May 3, 1982, unless otherwise noted.

Subpart A—General

§ 636.1 Supplemental Funds Program for Cooperative Education.

In awarding 50 percent of the unused College Work-Study Program funds that are available for reallotment as supplemental funds, the Secretary gives preference to eligible institutions of higher education for use in initiating, improving, and expanding programs of cooperative education that offer students alternating or parallel periods of academic study and public or private employment that—

(a) Afford students the opportunity to earn funds necessary for continuing and completing their education; and

(b) As far as practicable, give students work experience related to their academic or occupational objectives.

(42 U.S.C. 2752(d))

§ 636.2 Eligible grantees.

The following are eligible to apply for grants under this part:

(a) Institutions of higher education that conduct programs of cooperative education—as described in § 636.1—and propose to initiate programs of Cooperative Education, as defined in 34 CFR 631.3(b).

(b) Institutions of higher education that conduct programs of Cooperative Education—as defined in 34 CFR 631.3(b)—and propose to improve and expand those programs.

(20 U.S.C. 1133, 42 U.S.C. 2752(d))

§ 636.3 Regulations that apply to this program.

The following regulations apply to institutions receiving funds under this part:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (Definitions).

(b) The regulations in this Part 636.

(20 U.S.C. 1221e-3(a)(1), 1133, 42 U.S.C. 2752(d))

§ 636.4 Definitions that apply to this program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Contract
EDGAR
Equipment
Grant
Grantee
Secretary

(b) *Definitions in the Cooperative Education Program.* The following terms used in this part are defined in 34 CFR Part 631:

Act
Alternating periods of study and employment
Cooperative Education
Institutions of higher education
Parallel periods of study and employment
Student

(c) *Definitions that apply to this part.* The following definitions apply to this part:

"Assisted" means both of the following:

(1) Received academic and career counseling; and

(2) Was placed in a work experience by a program of cooperative education.

"College Work-Study Program award year" means the period between July 1 of one year and June 30 of the next year.

"Expand Cooperative Education" means offer Cooperative Education, as defined in 34 CFR 631.3(b), to students in an academic department or discipline not presently participating in a program of Cooperative Education, or increase the number of students served in a program of Cooperative Education.

"Full-time equivalent student" means two or more students whose credit hours, when combined, equal the number of credit hours that a full-time student at that institution of higher education is required to carry.

"Improve Cooperative Education" means provide additional support to a program of Cooperative Education, as defined in 34 CFR 631.3(b).

"Initiate Cooperative Education" means bring an existing program of cooperative education—as described in § 636.1—into conformity with a program of Cooperative Education, as defined in 34 CFR 631.3(b).

(20 U.S.C. 1221e-3(a)(1), 1133, 42 U.S.C. 2752(d))

Subpart B—Activities the Secretary Assists Under This Program

§ 636.10 Eligible activities.

Supplemental funds shall be used for initiating, improving, and expanding programs of Cooperative Education, as defined in 34 CFR 631.3(b).

(42 U.S.C. 2752(d))

Subpart C—How To Apply for a Grant

§ 636.20 Application information.

(a) To receive funds under this part, an institution of higher education must submit an application to the Secretary on official institutional stationery and at such time as the Secretary may require.

(b) An application must contain—

(1) The number of full-time students assisted by the institution's program of cooperative education during the most recently completed College Work-Study Program award year;

(2) The number of full-time equivalent students assisted by the institution's program of cooperative education during the most recently completed College Work-Study Program award year; and

(3) A narrative budget describing how the funds will be used for initiating, improving, and expanding a program of Cooperative Education. The budget must be submitted to the Department of Education *after* the Secretary advises the institution of the amount of the grant to be awarded.

(c) In calculating the number of students assisted in a program of cooperative education, an applicant may include students assisted under the College Work-Study Program.

(20 U.S.C. 1133, 42 U.S.C. 2752(d))

§ 636.21 Minimum award level.

The Secretary will not issue an award to an institution that does not qualify, under the formula specified in § 636.30, for an award of at least $500.

(20 U.S.C. 1221e-3(a)(1), 42 U.S.C. 2752(d))

Subpart D—How the Secretary Makes a Grant

§ 636.30 Distribution of funds.

The Secretary awards supplemental funds available for distribution under this part in accordance with the formula contained in Section 442(d)(2) of the Higher Education Act of 1965, as amended. Under that formula, each eligible institution's share of supplemental funds is based on a ratio of—

$$\frac{\text{The number of full-time students and full-time equivalent students assisted in the program of cooperative education at the institution}}{\text{The number of full-time students and full-time equivalent students assisted in programs of cooperative education in all eligible applicant institutions}} \quad \text{50\% of unused College Work-Study Program funds available for reallotment}$$

(20 U.S.C. 1221e-3(a)(1), 42 U.S.C. 2752(d))

Subpart E—Conditions a Grantee Must Meet

§ 636.40 Allowable costs.

A grantee may pay from its grant those costs allowed under 34 CFR 75.530 and 34 CFR 631.40.

(20 U.S.C. 1221e-3(a)(1), 1133, 42 U.S.C. 2752(d))

§ 636.41 Unallowable costs.

A grantee may not use its grant to pay for those costs disallowed under 34 CFR 75.519, 34 CFR 75.530 through 75.533 or 34 CFR 631.41.

(20 U.S.C. 1221e-3(a)(1), 1133, 42 U.S.C. 2752(d))

PART 637—THE MINORITY INSTITUTIONS SCIENCE IMPROVEMENT PROGRAM

Subpart A—General

Sec.

637.1 What is the Minority Institutions Science Improvement Program (MISIP)?
637.2 Who is eligible to receive a grant?
637.3 What regulations apply to the Minority Institutions Science Improvement Program?
637.4 What definitions apply to the Minority Institutions Science Improvement Program?

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

637.11 What kinds of projects are supported by this program?
637.12 What are institutional projects?
637.13 What are design projects?
637.14 What are special projects?
637.15 What are cooperative projects?

Subpart C—How Does One Apply for a Grant?

Sec.
637.21 Application procedures.

Subpart D—How Does the Secretary Make a Grant?

637.31 How does the Secretary evaluate an application?
637.32 What selection criteria does the Secretary use?

Subpart E—What Conditions Must Be Met by a Grantee?

637.41 What are the cost restrictions on design project grants?

AUTHORITY: Sec. 406A, General Education Provisions Act as enacted by Pub. L. 96-374, 94 Stat. 1497 (20 U.S.C. 1221e-1b), unless otherwise noted.

SOURCE: 46 FR 51204, Oct. 16, 1981, unless otherwise noted.

Subpart A—General

§ 637.1 What is the Minority Institutions Science Improvement Program (MISIP)?

The Minority Institutions Science Improvement Program is designed to effect long-range improvement in science education at predominantly minority institutions and to increase the flow of underrepresented ethnic minorities into scientific careers.

(20 U.S.C. 1221e-1b)

§ 637.2 Who is eligible to receive a grant?

The following parties are eligible to receive grants:

(a) Public and private, nonprofit minority institutions as defined in § 637.4(b) for minority institutions.

(b) Nonprofit science-oriented organizations, professional scientific societies, and all nonprofit, accredited colleges and universities which render a needed service to a group of eligible minority institutions or which provide in-service training for project directors, scientists, and engineers from eligible minority institutions.

(20 U.S.C. 1221e-1b)

§ 637.3 What regulations apply to the Minority Institutions Science Improvement Program?

The following regulations apply to the Minority Institutions Science Improvement Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (Definitions).

(b) The regulations in this Part 637.

(20 U.S.C. 1221e-1b, 20 U.S.C. 3474)

§ 637.4 What definitions apply to the Minority Institutions Science Improvement Program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77.

Applicant
Application
Department
EDGAR
Grants
Grantee
Nonprofit
Private
Project
Project period
Secretary

(20 U.S.C. 1221e-3(a)(1))

(b) *Definitions that apply to this part:*

"Accredited" means currently certified by a nationally recognized accrediting agency or making satisfactory progress toward achieving accreditation.

"Minority" means American Indian, Alaskan Native, black (not of Hispanic origin), Hispanic (including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin), Pacific Islander or other ethnic group underrepresented in science and engineering.

"Minority institution" means an accredited college or university whose enrollment of a single minority group or a combination of minority groups as defined in this section exceeds fifty percent of the total enrollment. The Secretary verifies this information from the data on enrollments (Higher Education General Information Surveys HEGIS XIII) furnished by the institution to the Office for Civil Rights, Department of Education.

"Science" means, for the purposes of this program, the biological, engineering, mathematical, physical, and social sciences, and the history and philosophy of science; also included are interdisciplinary fields which are comprised of overlapping areas among two or more sciences.

"Underrepresented in science and engineering" means a minority group whose number of scientists and engineers per 10,000 population of that group is substantially below the comparable figure for scientists and engineers who are white and not of Hispanic origin.

(20 U.S.C. 1221e-1b)

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 637.11 What kinds of projects are supported by this program?

The Secretary awards grants under this program for all or some of the following categories of projects:

(a) Institutional projects for implementing a comprehensive science improvement plan as described in § 637.12.

(b) Design projects for developing a long-range science improvement plan as described in § 637.13.

(c) Special projects to support activities as described in § 637.14.

(d) Cooperative projects to share facilities and personnel and disseminate information as described in § 637.15.

(20 U.S.C. 1221e-1b)

§ 637.12 What are institutional projects?

(a) Institutional project grants support the implementation of a comprehensive science improvement plan, which may include any combination of activities for improving the preparation of minority students for careers in science.

(b) Activities that the Secretary may assist under an institutional project include, but are not limited to, the following:

(1) Faculty development programs; or

(2) Development of curriculum materials.

(3) Eligible applicants for institutional projects are minority institutions.

(20 U.S.C. 1221e-1b)

§ 637.13 What are design projects?

(a) Design project grants assist minority institutions that do not have their own appropriate resources or personnel to plan and develop long-range science improvement programs.

(b) Activities that the Secretary may assist under a design project include, but are not limited to, the following:

(1) Development of planning, management, and evaluation systems; and

(2) Improvement of institutional research or development offices.

(c) Eligible applicants for design projects are minority institutions that have not received support under this program in prior years.

(20 U.S.C. 1221e-1b)

§ 637.14 What are special projects?

There are two types of special projects grants—

(a) Special project grants for which minority institutions are eligible which support activities that—

(1) Improve quality training in science and engineering at minority institutions; or

(2) Enhance the minority institutions' general scientific research capabilities.

(b) Special project grants for which all applicants are eligible which support activities that—

(1) Provide a needed service to a group of eligible minority institutions; or

(2) Provide in-service training for project directors, scientists, and engineers from eligible minority institutions.

(c) Activities that the Secretary may assist under a special project include, but are not limited to, the following:

(1) Advanced science seminars;

(2) Science faculty workshops and conferences;

(3) Faculty training to develop specific science research or education skills;

(4) Research in science education;

(5) Programs for visiting scientists;

(6) Preparation of films or audio-visual materials in science;

(7) Development of learning experiences in science beyond those normally available to minority undergraduate students;

(8) Development of pre-college enrichment activities in science; and

(9) Any other activities designed to address specific barriers to the entry of minorities into science.

(c) Eligible applicants for special projects of the type listed in paragraphs (a) (1) and (2) of this section are minority institutions. Eligible applicants for special project of the type listed in paragraphs (a) (3) and (4) of this section are all applicants eligible for assistance under this program.

(20 U.S.C. 1221e-1b)

§ 637.15 What are cooperative projects?

(a) Cooperative project grants assist groups of nonprofit accredited colleges and universities to work together to conduct a science improvement project.

(b) Activities that the Secretary may fund under cooperative projects include, but are not limited to, the following:

(1) Assisting institutions in sharing facilities and personnel;

(2) Disseminating information about established programs in science and engineering;

(3) Supporting cooperative efforts to strengthen the institutions' science and engineering programs; and

(4) Carrying out a combination of any of the activities in paragraphs (c)(1)-(3) of this section.

(c) Eligible applicants for cooperative projects are groups of nonprofit accredited colleges and universities whose primary fiscal agent is an eligible minority institution as defined in § 637.4(b).

(20 U.S.C. 1221e-1b)

Supbart C—How Does One Apply for a Grant?

§ 637.21 Application procedures.

One applies for a grant under the procedures of EDGAR §§ 75.100 through 75.129.

Subpart D—How Does the Secretary Make a Grant?

§ 637.31 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 637.32.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score of each criterion is indicated in parentheses.

(d) For applications of substantially equal quality, the Secretary gives priority to applicants which have not previously received funding from the program and to previous grantees with a proven record of success, as well as to applications that contribute to achieving balance among funded projects with respect to:

(1) Geographic region;

(2) Academic discipline; and

(3) Project type.

(20 U.S.C. 1221e-1b)

§ 637.32 What selection criteria does the Secretary use?

The Secretary evaluates applications using the following criteria:

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) Higher quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) Methods of coordination. (See EDGAR 34 CFR 75.581)

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project.

(iv) The extent to which the applicant, as part of its nondiscriminatory emloyment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of a racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objective of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See EDGAR 34 CFR 75.590—Evaluation by the grantee; where applicable)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 1221(e)-3(a)(1))

(f) *Identification of need for the project.* (10 points).

(1) The Secretary reviews each application for information that shows the identification of need for the project.

(2) The Secretary looks for information that shows—

(i) An adequate needs assessment;

(ii) An identification of specific needs in science; and

(iii) An involvement of appropriate individual, especially science faculty, in identifying the institutional needs.

(g) *Potential institutional impact of the project.* (15 points)

(1) The Secretary reviews each application to determine the extent to which the proposed project gives evidence of potential for enhancing the institution's capacity for improving and maintaining quality science education for its minority students.

(2) The Secretary looks for information that shows—

(i) For an institutional or cooperative project, the extent to which both the established science education program(s) and the proposed project will expand or strengthen the established program(s) in relation to the identified needs; or

(ii) For a design project, the extent to which realistic long-range science education improvement plans will be developed with the technical assistance provided under the project; or

(iii) For a special project, the extent to which it addresses needs that have not been adequately addressed by an existing institutional science program or takes a particularly new and exemplary approach that has not been taken by any existing institutional science program.

(h) *Institutional commitment to the project.* (15 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to continue the project activities when funding ceases.

(2) The Secretary looks for information that shows—

(i) Adequate institutional commitment to absorb any after-the-grant burden initiated by the project;

(ii) Adequate plans for continuation of project activities when funding ceases;

(iii) Clear evidence of past institutional commitment to the provision of quality science programs for its minority students; and

(iv) A local review statement signed by the chief executive officer of the institution endorsing the project and indicating how the project will accelerate the attainment of the institutional goals in science.

(i) *Expected outcomes.* (10 points)

(1) The Secretary reviews each application to determine the extent to which minority students will benefit from the project.

(2) The Secretary looks for information that shows—

(i) Expected outcomes likely to result in the accomplishment of the program goal;

(ii) Educational value for science students; and

(iii) Possibility of long-term benefits to minority students, faculty, or the institution.

(j) *Scientific and educational value of the proposed project.* (10 points)

(1) The Secretary reviews each application for information that shows its potential for contributions to science education.

(2) The Secretary looks for information that shows—

(i) The relationship of the proposed project to the present state of science education;

(ii) The use or development of effective techniques and approaches in science education; and

(iii) Potential use of some aspects of the project at other institutions.

(20 U.S.C. 1221e-1b)

Subpart E—What Conditions Must be Met by a Grantee?

§ 637.41 What are the cost restrictions on design project grants?

For design project grants funds may not be used to pay more than fifty percent of the academic year salaries of faculty members involved in the project.

(20 U.S.C. 1221e-1b)

PART 639—LAW SCHOOL CLINICAL EXPERIENCE PROGRAM

Subpart A—General

Sec.
639.1 Law School Clinical Experience Program.
639.2 Eligible parties.
639.3 Regulations that apply to the Law School Clinical Experience Program.
639.4 Definitions.

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

639.10 Authorized activities.

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

639.30 How does the Secretary evaluate an application?
639.31 What selection criteria does the Secretary use?

Subpart E—What Conditions Must a Grantee Meet?

639.40 Costs.

Authority: Part E of Title IX of the Higher Education Act as amended by Pub. L. 96-374 (94 Stat. 1367, 1487; 20 U.S.C. 1134n-1134p), unless otherwise noted.

Source: 46 FR 36339, July 14, 1981, unless otherwise noted.

Subpart A—General

§ 639.1 Law school clinical experience program.

(a) The Law School Clinical Experience Program provides assistance to accredited law schools for establishing or expanding programs of clinical experience for students in the practice of law.

(b) Expanding programs of clinical experience includes, but is not limited to, any of the following:

(1) Development of new areas of clinical experience.

(2) Increase in the number of participating students.

(3) Provision of appropriate and improved supervision.

(4) Development and implementation of new teaching techniques.

(20 U.S.C. 1134n)

§ 639.2 Eligible parties.

The following are eligible to apply:

(a) Individual law schools that have been accredited by a nationally recognized agency approved by the Secretary.

(b) A combination or consortium of accredited law schools.

(20 U.S.C. 1134n(d))

§ 639.3 Regulations that apply to the law school clinical experience program.

The following regulations apply to grants under the Law School Clinical Experience Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (Definitions); and

(b) The regulations in this Part 639.

(20 U.S.C. 1221e-3; 3474)

§ 639.4 Definitions.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in EDGAR, 34 CFR Part 77:

Applicant
Application
Award
Contract
Department
EDGAR
Grant
Project
Secretary

(b) *Definitions that apply to this part.* The following definition applies to this part:

"Simulation" is a learning exercise that examines and helps to explain a theory or concept by requiring a law student, as an active participant, to simulate the role of a lawyer confronted with a legal problem of a client (See § 639.10(b) for exclusions).

(20 U.S.C. 1134n(a))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 639.10 Authorized activities.

(a) Authorized activities under this program include the development—through simulation, or actual experience, or both—of skills usable in the practice of law.

(1) These skills include, but are not limited to, interviewing witnesses, factual and related investigation and analysis, counseling clients, negotiating compromises, drafting documents, advocacy before legal decision-makers, and training in professional responsibility.

(2) These skills may be taught by involving the students in any one or more of the following:

(i) Judicial, administrative, executive, or legislative proceedings;

(ii) Office or house counsel problems; or

(iii) Factual investigation, empirical research, or policy or legal analysis.

(b) The Secretary does not fund moot court activities or student exercises of the type usually performed in courses on legal research and writing.

(20 U.S.C. 1134n(a); H. Rept. 96-520 at 55-56)

Subparts C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 639.30 How does the Secretary evaluate an application?

(a)(1) Unless other applications are of outstanding quality, the Secretary first funds applications that propose the following activities:

(i) Preparation and trial of actual cases, including administrative cases and the settlement of controversies outside the courtroom; and

(ii) Service to persons who have difficulty in gaining access to legal representation.

(2) As used in paragraph (a)(1) of this section, the term "applications of outstanding quality" means those applications that score in the top 10 percent of all applications for which funds are available.

(b) Subject to paragraph (a) of this section, the Secretary evaluates an application on the basis of the criteria in § 639.31.

(1) The Secretary awards up to 100 possible points for these criteria.

(2) The maximum possible score for each criterion is indicated in parentheses following the title.

(c) Among applications of relatively equal quality, the Secretary may give priority to applications that:

(1) Ensure a wide geographic distribution throughout the United States of law school clinical experience programs; and (20 U.S.C. 1134o(b))

(2) Ensure that a wide variety of client groups are served.

(20 U.S.C. 1134n(a); S. Rept. 96-733 at 72-73; H. Rept. 96-520 at 55)

§ 639.31 What selection criteria does the Secretary use?

(a) *Plan of operation.* (25 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objec-

tive and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Fiscal commitment.* (15 points)

The Secretary looks for information that shows the degree to which the institution's regular budget provides funds for its clinical legal education program.

(g) *Faculty supervision.* (20 points)

The Secretary reviews each application for information that shows the extent to which the proposed project will increase the participation of law school faculty in the supervision of students under the clinical legal education program.

(h) *Academic credits.* (10 points)

The Secretary reviews each application for information that shows that the proposed program of law school clinical experience provides for the award of academic credits to participating students.

(20 U.S.C. 1134n(a))

Subpart E—What Conditions Must a Grantee Meet?

§ 639.40 Costs.

(a)(1) The Secretary makes available funds to cover up to 90 percent of the cost of establishing and expanding a Law School Clinical Experience project, subject to the limitations and applicable cost principles in EDGAR.

(2) The Secretary annually may establish a lower maximum Federal share that may take into account the number of years that a grantee has been funded under this program.

(b) Federal funds for a particular law school or consortium of law schools may not exceed $100,000 in any fiscal year, no part of which may be used to pay for indirect costs or charges.

(c) Allowable costs are direct costs incurred in carrying out an approved project, including:

(1) Planning;

(2) Training of faculty members and salary for additional faculty members;

(3) Travel and per diem for faculty and students;

(4) Reasonable stipends for students for work in the public service performed as part of any such program at a time other than during the regular academic year;

(5) Equipment and library resources;

(6) Involving practicing lawyers in the process of training law students to perform as lawyers; and

(7) Such other items as are allowed pursuant to these regulations.

(20 U.S.C. 1134n(b) and (c))

PART 642—TRAINING PROGRAM FOR SPECIAL PROGRAMS STAFF AND LEADERSHIP PERSONNEL

Subpart A—General

Sec.

642.1 Training Program for Special Programs Staff and Leadership Personnel.
642.2 Eligible applicants.
642.3 Eligible project participants.
642.4 Regulations that apply to the Training Program.
642.5 Definitions that apply to the Training Program.

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

642.10 Activities the Secretary Assists Under the Training Program.

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

642.30 How the Secretary evaluates an application for a new award.
642.31 Selection criteria the Secretary uses.
642.32 Prior experience.
642.33 Geographic distribution.
642.34 Priorities for funding.

Subpart E—What Conditions Must Be Met by a Grantee?

642.40 Allowable costs.
642.41 Nonallowable costs.

AUTHORITY: Secs. 417A and 417F of Title IV of the Higher Education Act of 1965, as amended by sec. 405, Pub. L. 96-374, 94 Stat. 1407-1411, (20 U.S.C. 1070d, 1070d-1d) unless otherwise noted.

SOURCE: 47 FR 17788, Apr. 23, 1982, unless otherwise noted.

Subpart A—General

§ 642.1 Training Program for Special Programs Staff and Leadership Personnel.

The Training Program for Special Programs Staff and Leadership Personnel—referred to in these regulations as the Training Program—provides Federal financial assistance for the training of staff and leadership personnel employed in, or preparing for employment in, projects under the Special Programs for Students from Disadvantaged Backgrounds—referred to in these regulations as Special Programs.

(20 U.S.C. 1070d, 1070d-1d)

§ 642.2 Eligible applicants.

The following are eligible to apply for a grant to carry out a Training Program project:

(a) Institutions of higher education.

(b) Public and nonprofit private agencies and organizations.

(20 U.S.C. 1070d, 1070d-1d)

§ 642.3 Eligible participants.

The following are eligible for training under this program:

(a) Leadership personnel and full and part-time staff members of projects under the Special Programs.

(b) Individuals preparing for employment as staff or leadership personnel in projects under the Special Programs.

(20 U.S.C. 1070d, 1070d-1d)

§ 642.4 Regulations that apply to the Training Program.

The following regulations apply to the Training Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and in 34 CFR Part 77 (Definitions).

(b) The regulations in this Part 642.

(20 U.S.C. 1221e-3(a)(1))

§ 642.5 Definitions that apply to the Training Program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Award
Budget
EDGAR
Equipment
Facilities
Fiscal year
Grant
Grantee
Nonprofit
Private
Project
Project period
Public
Secretary
State
Supplies

(b) *Definitions that apply to this part.* The following definitions apply to this part:

"Act" means the Higher Education Act of 1965, as amended.

(20 U.S.C. 1001 et seq.)

"Institution of higher education" means an educational institution as defined in Sections 1201(a) and 481 of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1141(a); 1088)

"Leadership personnel" means project directors, coordinators, and other individuals involved with the supervision and direction of projects under the Special Programs.

(20 U.S.C. 1070d; 1070d-1d)

"Special Programs" means the Upward Bound, Talent Search, Special Services for Disadvantaged Students, and Educational Opportunity Centers Programs.

(20 U.S.C. 1070d et seq.)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 642.10 Activities the Secretary assists under the Training Program.

(a) The Secretary awards assistance to train the staff and leadership personnel of a Special Programs project to enable them to more effectively operate Special Programs projects.

(b) The grants may provide support for conferences, seminars, internships, and workshops.

(20 U.S.C. 1070d, 1070d-1d)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 642.30 How the Secretary evaluates an application for a new award.

(a) The Secretary evaluates an application on the basis of the criteria in § 642.31.

(1) The Secretary awards up to 100 points for these criteria.

(2) The maximum possible score for each complete criterion is indicated in the parentheses next to the heading of that criterion.

(b) In addition, for applicants that have conducted a Training Program project within the three fiscal years prior to the fiscal year for which the applicant is applying, the Secretary considers the experience of the applicant on the basis of § 642.32.

(20 U.S.C. 1070d, 1070d-1d)

§ 642.31 Selection criteria the Secretary uses.

The Secretary uses the criteria in paragraphs (a) through (f) of this section to evaluate applications:

(a) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of managment that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (15 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need.* (25 points)

(1) The Secretary reviews each application for information that shows a need for a Training Program project.

(2) The Secretary looks for information that shows—

(i) The extent to which the proposed training addresses a specific need not addressed by other training projects available to Special Programs personnel;

(ii) The extent to which the proposed training addresses a significant training need in the region(s) to be served; and

(iii) The extent to which the proposed training addresses needs that are consistent with the priorities established by the Secretary as authorized under § 642.34.

(20 U.S.C. 1221e-3(a)(1); 1070d, 1070d-1d)

§ 642.32 Prior experience.

(a)(1) The Secretary gives priority to each applicant that has conducted a Training Program project under Title IV-A-4 of the Higher Education Act within the three fiscal years prior to the fiscal year for which the applicant is applying.

(2) To determine the number of priority points to be awarded each eligible applicant, the Secretary considers the applicant's prior experience of service delivery in accordance with paragraphs (b) and (c) of this section.

(b)(1) The Secretary may add from one to eight points to the point score obtained on the basis of the selection criteria in § 642.31, based on the applicant's success in meeting the administrative requirements and programmatic objectives of paragraph (c) of this section.

(2) The maximum possible score for each criterion is indicated in the parentheses preceding the criterion.

(c) The Secretary—based on information contained in one or more of the following: Performance reports, audit reports, training site visit reports, evaluations by participants, project evaluation reports, the previously funded application, the negotiated program plan(s), and the application under consideration—looks for information that shows—

(1) (2 points) The extent to which the project has served the number and kinds of training participants it was funded to serve;

(2) (2 points) The extent to which participants benefited from training in areas such as—

(i) Increased qualifications and skills in meeting the needs of disadvantaged students; and

(ii) Increased knowledge and understanding of the Special Programs;

(3) (2 points) The extent to which the applicant has achieved other goals and objectives as stated in the previously funded application or negotiated program plan; and

(4) (2 points) The extent to which the applicant has met the administrative requirements—including recordkeeping, reporting, and financial accountability—under the terms of the previously funded award.

(20 U.S.C. 1070d, 1070d-1d; Senate Report 96-733, 96 Cong. 1st Sess. p. 28)

[47 FR 24973, June 8, 1982]

EFFECTIVE DATE NOTE: At 47 FR 24943, June 8, 1982, § 642.32 was added effective July 23, 1982.

§ 642.33 Geographic distribution.

The Secretary, to the greatest extent possible, awards grants for Training Program projects that will be carried out in all of the regions of the Nation in order to assure accessibility to prospective training participants.

(20 U.S.C. 1070d, 1070d-1d)

§ 642.34 Priorities for funding.

(a) The Secretary, after consultation with regional and State professional associations of persons having special knowledge with respect to the training needs of Special Programs personnel, will establish annual funding priorities.

(b) The Secretary announces these priorities in the application notice published in the FEDERAL REGISTER.

(c) The Secretary considers an application for a Training Program project that does not address one of the priorities established for the year if the applicant addresses another significant training need in the local area being served by the Special Programs.

(20 U.S.C. 1070d, 1070d-1d)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 642.40 Allowable costs.

Allowable project costs may include the following costs reasonably related to carrying out a Training Program project:

(a) Rental of space, if space is not available at a sponsoring institution and if the space is not owned by a sponsoring institution.

(b) Printing.

(c) Postage.

(d) Purchase or rental of equipment if approved in writing by the Secretary.

(e) Consumable supplies.

(f) Transportation costs for participants and training staff.

(g) Lodging and subsistence costs for participants and training staff.

(h) Transportation costs, lodging and subsistence costs and fees for consultants, if any.

(i) Honorariums for speakers who are not members of the staff or consultants to the project.

(j) Other costs that are specifically approved in advance and in writing by the Secretary.

(20 U.S.C. 1070d, 1070d-1d)

§ 642.41 Nonallowable costs.

Costs that may not be charged against a grant under this program include the following:

(a) Research not directly related to the evaluation or improvement of the project.

(b) Construction, renovation, or remodeling of any facilities.

(c) Stipends, tuition fees, and other direct financial assistance to trainees other than those participating in internships.

(20 U.S.C. 1070d, 1070d-1d)

PART 643—TALENT SEARCH PROGRAM

Subpart A—General

Sec.
643.1 Talent Search Program.
643.2 Eligible applicants.
643.3 Eligible project participants: General.
643.4 Eligible project participants: Selection requirements.
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AUTHORITY: Secs. 417A and 417B of the Higher Education Act of 1965, as amended (20 U.S.C. 1070d, 1070d-1), unless otherwise noted.

SOURCE: 47 FR 7605, Feb. 19, 1982, unless otherwise noted.

Subpart A—General

§ 643.1 Talent Search Program.

The Talent Search Program provides Federal financial assistance to projects designed to assist participants to continue in and graduate from secondary schools and enroll in postsecondary educational programs.

(20 U.S.C. 1070d, 1070d-1)

§ 643.2 Eligible applicants.

The following are eligible to apply for a grant to carry out a Talent Search project:

(a) Institutons of higher education.

(b) Public and private agencies and organizations.

(c) Secondary schools, in exceptional cases, if there are no other applicants capable of providing this program in the target areas to be served by the proposed projects.

(20 U.S.C. 1070d, 1070d-1)

§ 643.3 Eligible project participants: General.

(a) An individual is eligible to participate in a Talent Search project if the individual—

(1)(i) Is a citizen or national of the United States;

(ii) Is a permanent resident of the United States;

(iii) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands;

(2) Resides in the target area or attends a target school;

(3) Has completed the sixth grade or is at least 12 years old and is not older than 27. However, if there is no Educational Opportunity Center serving the same target area as the Talent Search project, an individual may be older than 27 and still be an eligible participant;

(4) In the case of an individual enrolled in or graduated from secondary school, has potential for education at the postsecondary level, and needs one or more of the services provided by the project to undertake a program of postsecondary education, and, if necessary, to complete a program of secondary education;

(5) In the case of an individual who has not completed a program of education at the secondary or postsecondary level, has the ability to re-enter and complete a program of education at the secondary or postsecondary level, and needs one or more of the services provided by the project to re-enter and complete such a program; and

(6) Is not currently enrolled in a program of postsecondary education.

(b) *Veterans.* A veteran, regardless of age, is eligible to participate in a Talent Search project if he or she satisfies the eligibility requirements in paragraph (a) of this section other than the age requirement of paragraph (a)(3).

(20 U.S.C. 1070d-1)

§ 643.4 Eligible project participants: Selection requirements.

(a) At least two-thirds of the eligible individuals an applicant proposes to serve under a Talent Search project must be low-income individuals who are potential first-generation college students.

(b) A "low-income individual" means an individual whose family's taxable income did not exceed 150 percent of the poverty level in the calendar year preceding the year in which the individual participates in the project. Poverty level income is determined by using criteria of poverty established by the Bureau of the Census, U.S. Department of Commerce.

(c)(1) A "potential first-generation college student" means a person neither of whose parents received a bachelor's degree.

(2) With respect to an individual 18 years and under, only the natural or adoptive parents who are currently residing with the individual are considered the individual's parents in determining whether the individual meets the criterion of being a potential first-generation college student.

(3) With respect to an individual over 18, only the natural or adoptive parents who were residing with the individual before the individual's eighteenth birthday are considered the individual's parents in determining whether the individual meets the criterion of being a potential first-generation college student.

(20 U.S.C. 1070d-1; House Report 96-520, 96 Cong. 1st Sess. p. 26 (1979) and Senate Report 96-733, 96 Cong. 2nd Sess. p. 26 (1980))

§ 643.5 Regulations that apply to the Talent Search Program.

The following regulations apply to the Talent Search Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (Definitions).

(b) The regulations in this Part 643.

(20 U.S.C. 3474, 1070d, 1070d-1, 1221e-3)

§ 643.6 Definitions that apply to the Talent Search Program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Award
Budget
EDGAR
Equipment
Facilities
Fiscal year
Grant
Grantee
Nonprofit
Private
Project
Public
Secondary school
Secretary
State
Supplies

(20 U.S.C. 1070d, 1070d-1, 1221e-3)

(b) *Definitions that apply to this part.* The following definitions apply to this part:

"Act" means the Higher Education Act of 1965, as amended.

(20 U.S.C. 1001 *et seq.*)

"Institution of higher education" means an educational institution as defined in sections 1201(a) and 481 of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1141(a), 1088)

"Postsecondary education" means a program of education beyond the secondary school level.

(20 U.S.C. 1070d, 1070d-1)

"Target area" means a discrete geographic area—as determined by the applicant—that will be served by a Talent Search project.

(20 U.S.C. 1070d, 1070d-1)

"Target school" means a secondary school that will be served by a Talent Search project.

(20 U.S.C. 1070d, 1070d-1)

"Veteran" means a person as defined in 38 U.S.C. 1652(a).

(38 U.S.C. 1652(a))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 643.10 Kinds of projects the Secretary assists under the Talent Search Program.

(a) The Secretary gives consideration to an applicant for a Talent Search project that, in its target area, proposes to—

(1) Identify qualified individuals with potential for education at the postsecondary level;

(2) Encourage qualified individuals to complete secondary school and undertake a program of postsecondary education;

(3) Publicize the availability of student financial assistance to persons who pursue a program of postsecondary education; and

(4) Encourage persons who have not completed programs of education at

the secondary or postsecondary level, but who have the ability to complete those programs, to reenter the programs.

(b) A Talent Search project may provide tutorial services for a participant who—

(1) Is being encouraged to enter or reenter a program of postsecondary education; and

(2) Is not enrolled in an Upward Bound project.

(c) The Secretary will consider an application that proposes to carry out activities in addition to the ones listed in paragraphs (a) and (b) of this section if the activities support the purposes of the Talent Search Program.

(20 U.S.C. 1070d, 1070d-1)

Subpart C—How Does One Apply for a Grant?

§ 643.20 Assurances.

An applicant shall submit, as part of its application, the following assurances:

(a) That the project will be located in a setting or settings that are accessible to participants;

(b) That, if the grantee is an institution of higher education, it will not use the project as a part of its recruitment program; and

(c) That individuals participating in the project will not have access to services from another Talent Search project or from an Educational Opportunity Center.

(20 U.S.C. 1070d-1)

Subpart D—How Does the Secretary Make a Grant?

§ 643.30 How the Secretary evaluates an application for a new award.

(a) The Secretary evaluates an application on the basis of the criteria in § 643.31.

(1) The Secretary awards up to 100 points for these criteria.

(2) The maximum possible score for each complete criterion is indicated in parentheses next to the heading of that criterion.

(b) For applicants that have conducted a Talent Search project within the three fiscal years prior to the fiscal year for which the applicant is applying, the Secretary considers the experience of the applicant on the basis of § 643.32.

(c) In the final selection of similarly rated applications, the Secretary considers the relative need for a project in the area the applicant proposes to serve as compared to the need in areas other applicants propose to serve.

(20 U.S.C. 1070d, 1070d-1)

§ 643.31 Selection criteria the Secretary uses.

The Secretary uses the following criteria—in paragraphs (a) through (h)—to evaluate applications for new awards:

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women; and

(C) Handicapped persons.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have traditionally been underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need for the project.* (25 points)

(1) The Secretary reviews each application for information that shows a need for a Talent Search project in the area the applicant plans to serve;

(2) The Secretary looks for information that shows—

(i) (6 points) The number and percentage of individuals who are eligible to be served by a Talent Search project including those who reside in the target area and those who attend target schools;

(ii) (7 points) The extent to which the target area lacks the services and activities that are provided by a Talent Search project or an Educational Opportunity Center;

(iii) (6 points) For each of the three preceding years, the estimated dropout rates for each of the target schools; and

(iv) (6 points) For each of the three preceding years, the estimated number and percentage of students from each target school who enrolled in postsecondary institutions.

(g) *Likelihood of success.* (20 points)

(1) The Secretary reviews each application for information that shows the likelihood of success of the proposed project.

(2) The Secretary looks for information that shows—

(i) (12 points) The extent to which the project is likely, in the target area—

(A) To increase the secondary school completion rate of participants;

(B) To increase the postsecondary school admission rate of participants; and

(C) To increase the secondary and postsecondary readmission rates of those participants who have not completed secondary or postsecondary education; and

(ii) (8 points) The comprehensiveness of the applicant's plan for providing the services and activities listed in § 643.10.

(h) *Community support.* (15 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to involve the

community in implementing the project.

(2) The Secretary looks for information that shows—

(i) (8 points) The extent to which the applicant plans to publicize and inform the target schools and residents of the target area of the services provided by the Talent Search project; and

(ii) (7 points) The extent to which the applicant has received and has included in its application written commitments by community organizations and other appropriate groups for the use of community and other resources to supplement authorized activities.

(20 U.S.C. 1221e-3(a)(1); 1070d, 1070d-1)

§ 643.32 Prior experience.

(a)(1) The Secretary gives priority to each applicant that has conducted a Talent Search project within the three fiscal years prior to the fiscal year for which the applicant is applying.

(2) To determine the number of priority points to be awarded each eligible applicant, the Secretary considers the applicant's prior experience of service delivery in accordance with paragraphs (b) and (c) of this section.

(b)(1) The Secretary may add from one to fifteen points to the point score obtained on the basis of the selection criteria in § 643.31, based on the applicant's success in meeting the administrative requirements and programmatic objectives of paragraph (c) of this section.

(2) The maximum possible score for each criterion is indictated in the parentheses preceding the criterion.

(c) The Secretary—based on information contained in one or more of the following: Performance reports, audit reports, site visit reports, project evaluation reports, the previously funded application, the negotiated program plan(s), and the application under consideration—looks for information that shows—

(1) (3 points) The extent to which the project has served the number of participants it was funded to serve;

(2) (3 points) The extent to which the project was successful in encouraging project participants to complete high school;

(3) (3 points) The extent to which the project was successful in encouraging project participants to undertake a program of postsecondary education;

(4) (3 points) The extent to which the applicant has achieved other goals and objectives as stated in the previously funded application or negotiated program plan; and

(5) (3 points) The extent to which the applicant has met administrative requirements—including recordkeeping, reporting, and financial accountability—under the terms of the previously funded award.

(20 U.S.C. 1070d, 1070d-1; Senate Report 96-733, 96 Cong. 1st Sess. p. 28)

[47 FR 24943, June 8, 1982]

Effective Date Note: At 47 FR 24943, June 8, 1982, § 643.32 was added effective July 23, 1982.

Subpart E—What Conditions Must Be Met by a Grantee?

§ 643.40 Allowable costs.

Allowable project costs not specifically covered by 34 CFR Part 74 may include the following costs reasonably related to carrying out a Talent Search project:

(a) Transportation and meal costs for participants and staff for—

(1) Approved visits to postsecondary educational institutions in the area;

(2) Participation in "College Days" activities; and

(3) Field trips to observe and meet with persons who are employed in various career fields and who can act as role models for participants.

(b) Purchase of testing materials.

(c) In-service training of project staff.

(d) Tutorial services if none are available to participants through an Upward Bound project in the target area.

(e) Rental of space if space is not available at the host institution and the space rented is not owned by the host institution.

(20 U.S.C. 1070d, 1070d-1)

§ 643.41 Nonallowable costs.

Costs that may not be charged against a grant under this program include the following:

(a) Tuition, fees, stipends, or other forms of direct financial support for participants.

(b) Application fees for enrollment or financial aid.

(c) Lodging for project participants.

(d) Duplication of services that are available to participants through—

(1) State, local, or private sources;

(2) The institution or agency sponsoring the project; or

(3) Other Federal programs.

(e) Research not directly related to the evaluation or improvement of the project.

(f) Purchase of major equipment unless the grantee demonstrates to the Secretary's satisfaction that purchase is less expensive than renting.

(g) Construction, renovation, or remodeling of any facilities.

(20 U.S.C. 1070d, 1070d-1)

§ 643.42 Other requirements of a grantee.

Each grantee shall—

(a) Engage a full-time project director. However, the Secretary may waive the full-time requirement as specified in EDGAR, 34 CFR 75.511; and

(b)(1) Determine the eligibility of each participant at the time that the individual is selected to participate in the project.

(2) The grantee does not have to revalidate a participant's eligibility after this time.

(20 U.S.C. 1070d, 1070d-1)

PART 644—EDUCATIONAL OPPORTUNITY CENTERS PROGRAM

Subpart A—General

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AUTHORITY: Secs. 417A and 417E of the Higher Education Act of 1965, as amended by sec. 405, Pub. L. 96-374, 94 Stat. 1407-1411 (20 U.S.C. 1070d, 1070d-1c), unless otherwise noted.

SOURCE: 47 FR 2258, Jan. 14, 1982, unless otherwise noted.

Subpart A—General

§ 644.1 The Educational Opportunity Centers Program.

The Educational Opportunity Centers Program provides Federal financial assistance to establish and operate Educational Opportunitity Centers. Each center is designed to provide participants with—

(a) Information concerning financial and academic assistance available for individuals desiring to pursue a program of postsecondary education; and

(b) Assistance in applying for admission to institutions at which a program of postsecondary education is offered, including preparing applications for use by admissions and financial aid officers.

(20 U.S.C. 1070d, 1070d-1c)

§ 644.2 Eligible applicants.

The following are eligible to apply for a grant to establish and operate an Educational Opportunity Center:

(a) Institutions of higher education.

(b) Public and private agencies and organizations.

(c) Secondary schools, in exceptional cases, if there are no other applicants capable of providing this program in the target areas to be served by the proposed project.

(20 U.S.C. 1070d, 1070d-1c)

§ 644.3 Eligible project participants: general.

An individual is eligible to participate in an Educational Opportunity Center if the individual—

(a)(1) Is a citizen or national of the United States;

(2) Is a permanent resident of the United States;

(3) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(4) Is a permanent resident of the Trust Territory of the Pacific Islands;

(b) Resides in the target area;

(c) Is at least 19 years old, except that if there is no Talent Search project serving the same target area as the Educational Opportunity Center, an individual may be younger than 19;

(d) Needs one or more of the services provided by the center in order to pursue a program of postsecondary education; and

(e) Expresses a desire to pursue or is pursuing a program of postsecondary education.

(20 U.S.C. 1070d, 1070d-1c)

§ 644.4 Eligible project participants: selection requirements.

(a) At least two-thirds of the eligible individuals an applicant proposes to serve under an Educational Opportunity Center must be low-income individuals who are also first-generation college students or potential first-generation college students.

(b) A "low-income individual" means an individual whose family's taxable income did not exceed 150 percent of the poverty level in the calendar year preceding the year in which the individual participates in the project. Poverty level income is determined by using criteria of poverty established by the Bureau of the Census, U.S. Department of Commerce.

(c)(1) A "first-generation college student" or a "potential first-generation college student" means a person neither of whose parents received a bachelor's degree.

(2) With respect to an individual 18 years and under, only the natural or adoptive parents who are currently residing with the individual are considered the individual's parents in determining whether the individual meets the criterion of being a first-generation college student or a potential first-generation college student.

(3) With respect to an individual over 18, only the natural or adoptive parents who were residing with the individual before the individual's eighteenth birthday are considered the individual's parents in determining whether the individual meets the criterion of being a first-generation college student or a potential first-generation college student.

(20 U.S.C. 1070d, 1070d-1c)

§ 644.5 Regulations that apply to the Educational Opportunity Centers Program.

The following regulations apply to the Educational Opportunity Centers Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (Definitions).

(b) The regulations in this Part 644.

(20 U.S.C. 1221e-3(a)(1))

§ 644.6 Definitions that apply to the Educational Opportunity Centers Program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Award
Budget
EDGAR
Equipment

Facilities
Fiscal year
Grant
Grantee
Nonprofit
Private
Project
Public
Secondary school
Secretary
State
Supplies

(b) *Definitions that apply to this part.* The following definitions apply to this part:

"Act" means the Higher Education Act of 1965, as amended.

(20 U.S.C. 1001 *et seq.*)

"Institution of higher education" means an educational institution as defined in Sections 1201(a) and 481 of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1141(a), 1088)

"Postsecondary education" means a program of education beyond the high school level.

(20 U.S.C. 1070d, 1070d-1c)

"Target area" means a discrete geographic area—as determined by the applicant—that will be served by an Educational Opportunity Center.

(20 U.S.C. 1070d, 1070d-1c)

"Veteran" means a person as defined in 38 U.S.C. 1652(a).

(38 U.S.C. 1652(a))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 644.10 Kinds of projects the Secretary assists under the Educational Opportunity Centers Program.

(a) The Secretary gives consideration to an application for an Educational Opportunity Center that, in its target area, proposes to—

(1) Collect and disseminate information regarding available financial and academic assistance to participants desiring to pursue a program of postsecondary education; and

(2) Assist participants in preparing applications and other necessary materials—

(i) For admission to postsecondary institutions; and

(ii) For financial assistance at these institutions.

(b) The Secretary gives consideration to an applicant that, in addition to the activities listed in paragraph (a) of this section, proposes to provide tutoring and counseling for project participants who are not enrolled in an Upward Bound or a Special Services project that provides tutoring or counseling.

(c) The Secretary will consider an application that proposes to carry out activities in addition to the ones listed in paragraphs (a) and (b) of this section if the activities support the purposes of the Educational Opportunity Centers Program.

(20 U.S.C. 1070d, 1070d-1c)

Subpart C—How Does One Apply for a Grant?

§ 644.20 Assurances

(a) If the applicant is an institution of higher education, the applicant shall submit as part of its application an assurance that it will not use the center as a part of its recruitment program.

(b) An applicant shall submit as part of its application an assurance that individuals participating in the project proposed in the application do not have access to services from another Educational Opportunity Center or from a Talent Search project.

(20 U.S.C. 1070d, 1070d-1c)

Subpart D—How Does the Secretary Make a Grant?

§ 644.30 How the Secretary evaluates an application for a new award.

(a) The Secretary evaluates an application on the basis of the criteria in § 644.31.

(1) The Secretary awards up to 100 points for these criteria.

(2) The maximum possible score for each complete criterion is indicated in

parentheses next to the heading of that criterion.

(b) For applicants that have conducted an Educational Opportunity Center project within the three fiscal years prior to the fiscal year for which the applicant is applying, the Secretary considers the experience of the applicant on the basis of § 644.32.

(c) In the final selection of similarly rated applications, the Secretary considers the relative need for a project in the area the applicant proposes to serve as compared to the need in areas other applicants propose to serve.

(20 U.S.C. 1070d, 1070d-1c)

§ 644.31 Selection criteria the Secretary uses.

The Secretary uses the following criteria—in paragraphs (a) through (h)—to evaluate applications:

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women; and

(C) Handicapped persons.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need for the center.* (25 points)

(1) The Secretary reviews each application for documented evidence that a need for an Educational Opportunity Center exists in the target area the applicant plans to serve.

(2) The Secretary looks for information that shows—

(i) (9 points) The number and percentage of individuals who are eligible to be served by an Educational Opportunity Center who reside in the target area;

(ii) (9 points) The extent to which the target area lacks the services and activities to be provided by the proposed Educational Opportunity Center;

(iii) (2 points) The estimated number of veterans in the target area who need services of an Educational Opportunity Center to pursue postsecondary education; and

(iv) (5 points) Other data that show the need of the adults in the target area for services that are provided by an Educational Opportunity Center.

(g) *Likelihood of success.* (20 points)

(1) The Secretary reviews each application for information that shows the likelihood of success.

(2) The Secretary looks for information that shows—

(i) (12 points) The comprehensiveness of the applicant's plan for carrying out the activities under § 644.10(a), those activities under § 644.10(b) that the applicant chooses to propose, and any other activities that the applicant proposes that relate to the goal of the program; and

(ii) (8 points) The extent to which the activities that the applicant proposes are likely to result in increases in the enrollment and retention in and successful completion of postsecondary educational programs by program participants.

(h) *Community participation and coordination.* (15 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to use and coordinate community and other resources.

(2) The Secretary looks for information that shows—

(i) (3 points) The extent to which representatives of the community, secondary schools, and postsecondary schools have participated in the formulation of the application;

(ii) (4 points) The extent to which the applicant has received and has included in the application written commitments by community organizations and other appropriate groups for the use of community and other resources to supplement authorized activities;

(iii) (4 points) The center's defined relationship with Talent Search, Upward Bound, and Special Services for Disadvantaged Students projects in the target area and similar programs and services in the target area in terms of—

(A) Coordinating services to individuals who participate in more than one program;

(B) Providing services not otherwise available from other projects and programs; and

(C) Avoiding duplication of services; and

(iv) (4 points) The degree to which the center is likely to develop relationships with a variety of institutions offering postsecondary educational programs to coordinate the resources and efforts of those institutions in admitting disadvantaged persons.

(20 U.S.C. 1221e-3(a)(1); 1070d, 1070d-1c)

§ 644.32 Prior experience.

(a)(1) The Secretary gives priority to each applicant that has conducted an Educational Opportunity Centers project within the three fiscal years prior to the fiscal year for which the applicant is applying.

(2) To determine the number of priority points to be awarded each eligible applicant, the Secretary considers the applicant's prior experience of service delivery in accordance with paragraphs (b) and (c) of this section.

(b)(1) The Secretary may add from one to fifteen points to the point score obtained on the basis of the selection criteria in § 644.31, based on the applicant's success in meeting the administrative requirements and programmatic objectives of paragraph (c) of this section.

(2) The maximum possible score for each criterion is indicated in the parentheses preceding the criterion.

(c) The Secretary, based on information contained in one or more of the following: Performance reports, audit reports, site visit reports, project evaluation reports, the previously funded application, the negotiated program plan(s), and the application under consideration—looks for information that shows—

(1) (3 points) The extent to which the project has served the number of participants it was funded to serve;

(2) (3 points) The extent to which the center has disseminated, in accordance with its negotiated program plan, information concerning financial and academic assistance available for individuals desiring to pursue a program of postsecondary education;

(3) (3 points) The extent to which the center has specifically assisted participants in applying for admission to postsecondary educational programs, including assisting participants in preparing necessary applications for use by admissions and financial aid officers;

(4) (3 points) The extent to which the applicant has achieved other goals and objectives as stated in the previously funded application or negotiated program plan; and

(5) (3 points) The extent to which the applicant has met the administrative requirements—including recordkeeping, reporting, matching funds, and financial accountability—under the terms of the previously funded award.

(20 U.S.C. 1070d, 1070d-1c; Senate Report 96-733, 96 Cong. 1st Sess. p. 28)

[47 FR 24944, June 8, 1982]

EFFECTIVE DATE NOTE: At 47 FR 24944, June 8, 1982, § 644.32 was added effective July 23, 1982.

Subpart E—What Conditions Must Be Met by a Grantee?

§ 644.40 Allowable costs.

Allowable project costs not specifically covered by 34 CFR Part 74 may include the following costs reasonably related to operating an Educational Opportunity Center:

(a) Transportation and meal costs for participants and staff for—

(1) Approved visits to postsecondary educational institutions in the area;

(2) Participation in "College Days" activities; and

(3) Field trips to observe and meet with persons who are employed in various career fields and who can act as role models for participants.

(b) Purchase of testing materials.

(c) In-service training of project staff.

(d) Tutorial and counseling services if none are available to participants through an Upward Bound or a Special Services project in the target area.

(e) Rental of space if space is not available at the sponsoring institution and the space rented is not owned by the sponsoring institution.

(20 U.S.C. 1070d, 1070d-1c)

§ 644.41 Nonallowable costs.

Costs that may not be charged against a grant under this program include the following:

(a) Tuition, fees, stipends, or other forms of direct financial support for participants.

(b) Application fees for enrollment or financial aid.

(c) Lodging for project participants.

(d) Duplication of services that are available to participants through—

(1) State, local, or private sources;

(2) The institution or agency sponsoring the project; or

(3) Other Federal programs.

(e) Research not directly related to the evaluation or improvment of the project.

(f) The purchase of major equipment, unless the grantee demonstrates to the Secretary's satisfaction that purchase is less expensive than renting.

(g) The construction, renovation, or remodeling of any facilities.

(20 U.S.C. 1070d, 1070d-1c)

§ 644.42 Matching.

(a) The Secretary pays up to 75 percent of the costs reasonably related to the establishment and operation of an Educational Opportunity Center.

(b) A grantee shall provide at least 25 percent of the costs related to the establishment and operation of an Educational Opportunity Center.

(c) The grantee's share may be derived from cash or in-kind contributions.

(d) In order to be considered as part or all of the grantee's share, in-kind contributions must be activities or services that qualify as allowable costs.

(20 U.S.C. 1070d, 1070d-1c)

§ 644.43 Other requirements of a grantee.

Each grantee shall—

(a) Design and implement an evaluation mechanism to test the effectiveness of the center's progress in meeting the approved goals and objectives;

(b) Engage a full-time project director. However, the Secretary may waive the full-time requirement as specified in EDGAR, 34 CFR 75.511; and

(c)(1) Determine the eligibility of each participant at the time that individual is selected to participate in the project.

(2) The grantee does not have to revalidate a participant's eligibility after this time.

(20 U.S.C. 1070d, 1070d-1c)

PART 645—UPWARD BOUND PROGRAM

Subpart A—General

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AUTHORITY: Secs. 417A and 417C of Title IV of the Higher Education Act of 1965, as amended (20 U.S.C. 1070d, 1070d-1a), unless otherwise noted.

SOURCE: 47 FR 9159, Mar. 3, 1982, unless otherwise noted.

Subpart A—General

§ 645.1 Upward Bound Program.

The Upward Bound Program provides Federal financial assistance to projects designed to generate in participants skills and motivation necessary for success in education beyond high school.

(20 U.S.C. 1070d, 1070d-1a)

§ 645.2 Eligible applicants.

The following are eligible to apply for a grant to carry out an Upward Bound project:

(a) Institutions of higher education.

(b) Public and private agencies and organizations.

(c) Secondary schools, in exceptional cases, if there are no other applicants capable of providing this program in the target areas to be served by the proposed projects.

(20 U.S.C. 1070d, 1070d-1a)

§ 645.3 Eligible project participants: general.

(a) An individual is eligible to participate in an Upward Bound project if the individual—

(1) (i) Is a citizen or national of the United States;

(ii) Is a permanent resident of the United States;

(iii) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands;

(2) Is, at the time of initial selection, a potential first-generation college student or a low-income individual;

(3) Has a need for academic support in order to successfully pursue a program of education beyond high school; and

(4) At the time of initial selection, has completed the eighth grade but has not entered the twelfth grade and is at least 13 years old but not older than 19. However, the project may serve individuals who are less than 13 or have not completed the eighth grade if the secondary schools in the project's target area have an unusually high dropout rate. In addition, the project may serve individuals who have entered the twelfth grade if there are no eligible unserved individuals in the project's target area who are in the eighth to the eleventh grades.

(b) *Veterans.* A veteran, regardless of age, is eligible to participate in an Upward Bound project if he or she satisfies the eligibility requirements in paragraph (a) of this section other than the requirements of paragraph (a)(4) of this section.

(20 U.S.C. 1070d, 1070d-1a)

§ 645.4 Eligible project participants: selection requirements.

(a) At least two-thirds of the eligible individuals the applicant proposed to serve under an Upward Bound project must, at the time of initial selection, be low-income individuals who are also potential first-generation college students.

(b) The remaining individuals the applicant proposes to serve must, at the time of initial selection, qualify as either low-income individuals or potential first-generation college students.

(c) A "low-income individual" means an individual who family's taxable income did not exceed 150 percent of the poverty level in the calendar year preceding the year in which the individual participates in the project. Poverty level income is determined by using criteria of poverty established by the Bureau of the Census, U.S. Department of Commerce.

(d)(1) A "potential, first-generation college student" means a person neither of whose parents received a bachelor's degree.

(2) With respect to an individual 18 years of age and under, only the natural or adoptive parents who are currently residing with the individual are considered the individual's parents in determining whether the individual meets the criterion of being a potential, first-generation college student.

(3) With respect to an individual over 18, only the natural or adoptive parents who were residing with the individual before the individual's eighteenth birthday are considered the individual's parents in determining whether the individual meets the criterion of being a potential, first-generation college student.

(20 U.S.C. 1070d, 1070d-1a; House Report 96-520, 96th Congress 1st. Sess. p. 26 (1979) and Senate Report 96-733, 96th Cong. 2nd Sess. p. 26 (1980))

§ 645.5 Regulations that apply to the Upward Bound Program.

The following regulations apply to the Upward Bound Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and in 34 CFR Part 77 (Definitions).

(b) The regulations in this Part 645.

(20 U.S.C. 3474, 1070d and 1070d-1a)

§ 645.6 Definitions that apply to the Upward Bound Program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Award
Budget
EDGAR
Equipment

Facilities
Fiscal year
Grant
Grantee
Nonprofit
Private
Project
Public
Secondary school
Secretary
State
Supplies

(b) *Definitions that apply to this part.* The following definitions apply to this part:

"Act" means the Higher Education Act of 1965, as amended.

(20 U.S.C. 1001 *et seq.*)

"Institution of higher education" means an educational institution as defined in Section 1201(a) and 481 of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1141(a); 1088)

"Limited proficiency in English," with reference to an individual, means an individual—

(1)(i) who was not born in the United States;

(ii) Whose native language is other than English;

(iii) Who comes from an environment in which a language other than English is most relied upon for communication; or

(iv) Who is an American Indian or Alaskan Native student and comes from an environment in which a language other than English has had a significant impact on his or her level of proficiency in the English language; and

(2) Who, as a result of the circumstances described in paragraph (1) of this definition, is unable to learn successfully in classrooms in which the language of instruction is English because he or she cannot adequately understand, speak, read, or write the English language.

(20 U.S.C. 3223(a)(1))

"Postsecondary education" means a program of education beyond the secondary school level.

(20 U.S.C. 1070d, 1070d-1a)

"Target area" means a discrete geographic area—as determined by the applicant—that is or would be served by an Upward Bound project.

(20 U.S.C. 1070d, 1070d-1a)

"Target school" means a secondary school that serves students residing in a target area and that is or would be served by an Upward Bound project.

(20 U.S.C. 1070d, 1070d-1a)

"Veteran" means a person as defined in 38 U.S.C. 1652(a).

(38 U.S.C. 1652(a))

Subpart B—What Kinds of Projects Does the Secretary Assist under This Program?

§ 645.10 Kinds of projects the Secretary assists under the Upward Bound Program.

(a) The Secretary assists two kinds of projects under the Upward Bound Program:

(1) Regular Upward Bound projects that provide services to qualified secondary school students.

(2) Veterans Upward Bound projects that provide services to veterans.

(b) Regular Upward Bound projects must have both an academic year component, as described in § 645.11, and a summer component, as described in § 645.12.

(c) An Upward Bound project, including a Veterans Upward Bound Project, may provide services such as—

(1) Instruction in reading, writing, study skills, mathematics, and other subjects necessary for success in education beyond high school;

(2) Personal counseling;

(3) Academic advice and assistance in high school course selection;

(4) Tutorial services;

(5) Exposure to cultural events, academic programs, and other activities not usually available to disadvantaged youth;

(6) Activities designed to acquaint youths participating in the project with the range of career options available to them;

(7) Instruction designed to prepare youths participating in the project for careers in which persons from disad-

vantaged backgrounds are particularly underrepresented;

(8) On-campus residential programs; and

(9) Programs and activities as described in paragraphs (c) (1) through (8) of this section that are specially designed for individuals with limited proficiency in English.

(d) The Secretary does not restrict activities under this program to the optional activities specified in paragraph (c) of this section if the activities support the purpose of the Upward Bound Program.

(20 U.S.C. 1070d, 1070d-1a)

§ 645.11 Academic year component.

(a) During the academic year, regular Upward Bound projects shall provide to participants on a weekly basis services such as those described in § 645.10(c).

(b) To the extent possible, an Upward Bound project shall schedule services so that the project's activities do not interfere with a participant's full participation in the academic and nonacademic activities at the participant's secondary school.

(c) If the project location or the project staff are not readily accessible to participants because of distance or lack of transportation, the grantee may, with the Secretary's permission, provide services to participants every two weeks.

(20 U.S.C. 1070d, 1070d-1a)

§ 645.12 Summer component.

(a)(1) Regular Upward Bound projects shall provide a summer component of six weeks duration.

(2) The Secretary may approve a shorter or longer summer component if the applicant can demonstrate that a shorter or longer session will not hinder the effectiveness of the project nor prevent the project from achieving its stated goals and objectives.

(b) The summer component may be either a residential program or a nonresidential program.

(c) The summer component shall be designed to simulate a college-going experience for the participants.

(d) During the summer component, a project shall provide to participants on a daily basis services such as those described in § 645.10(c).

(e) The project may offer a bridge summer component for those Upward Bound participants who have graduated from secondary school and intend to enroll at a postsecondary institution in the upcoming fall semester. The bridge summer component provides participants with services and activities that aid in the transition from high school to postsecondary education.

(20 U.S.C. 1070d, 1070d-1a)

§ 645.13 Veterans projects.

(a) The Secretary may fund Upward Bound projects for veterans.

(b) In addition to the activities described in § 645.10(c), a Veterans Upward Bound project may—

(1) Provide intensive basic skills development in those academic subjects required for the successful completion of a high school equivalency program, if necessary, and for admission to postsecondary institutions;

(2) Provide short-term remedial-refresher courses for those veterans who are high school graduates but who have delayed pursuing postsecondary education. If the grantee is an institution of higher education, these courses may not duplicate courses otherwise available to veterans at the institution; and

(3) Assist veterans in securing services from other locally available resources such as the Veterans Administration, State veterans agencies, veterans associations, and other State and local agencies that serve veterans.

(20 U.S.C. 1070d, 1070d-1a)

§ 645.14 Project size.

(a) Each regular Upward Bound project shall serve between 50 and 150 participants.

(b) Each Veterans Upward Bound project shall serve a minimum of 120 veterans during a project year.

(c) The Secretary may waive the requirements of paragraphs (a) and (b) of this section if the applicant can demonstrate that the project will be effective and consistent with the goals of the program.

(20 U.S.C. 1070d, 1070d-1a)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 645.30 How the Secretary evaluates an application for a new award.

(a) The Secretary evaluates an application on the basis of the criteria in § 645.31.

(1) The Secretary awards up to 100 points for these criteria.

(2) The maximum possible score for each complete criterion is indicated in parentheses next to the heading of that criterion.

(b) For applicants that have conducted an Upward Bound project within the three fiscal years prior to the fiscal year for which the applicant is applying, the Secretary considers the experience of the applicant on the basis of § 645.32.

(c) In the final selection of similarly rated applications, the Secretary considers the relative need for a project in the area the applicant proposes to serve as compared to the need in areas other applicants propose to serve.

(20 U.S.C. 1070d, 1070d-1a)

§ 645.31 Selection criteria the Secretary uses.

The Secretary uses the following criteria—in paragraphs (a) through (h)—to evaluate applications:

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women; and

(C) Handicapped persons.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need for the project.* (25 points)

(1) The Secretary reviews each application for information that shows a need for an Upward Bound project in the area the applicant plans to serve.

(2) (9 points) The Secretary looks for information that shows the extent to which the target area lacks the services and activities provided by a regular Upward Bound or a Veterans Upward Bound project.

(3) (16 points) To determine the extent of the need for a regular Upward Bound project, the Secretary also considers—

(i) The estimated number of students enrolled in target schools who are from low-income families;

(ii) The estimated number and percentage of those types of students who subsequently enroll in postsecondary education;

(iii) The ratio of secondary school counselors to students in the target schools; and

(iv) The dropout rate of students from the target schools.

(4) (16 points) To determine the extent of the need for a Veterans Upward Bound project, the Secretary also considers the number of veterans in the target area who are eligible for and need Upward Bound services.

(g) *Likelihood of success.* (20 points)

(1) The Secretary reviews each application for information that shows the likelihood of success of the proposed project.

(2) (8 points) The Secretary looks for information that shows the extent to which the project is likely to—

(i) Generate academic skills and motivation that will enable the participants to complete a secondary educational program and to subsequently gain admission to postsecondary institutions; and

(ii) Enable the participants to attain those academic skills such as reading, writing, mathematics, and study skills, that are essential for postsecondary education and in which participants are deficient.

(3) (12 points) To determine the likelihood of success, the Secretary looks for information that shows the comprehensiveness of the applicant's plan for—

(i) Identifying and selecting eligible participants;

(ii) Diagnosing each participant's need for academic support in order to successfully pursue a program of postsecondary education;

(iii) Developing a plan of program support to improve each participant's skills; and

(iv) Providing activities and services, such as those listed in §645.10(c) that relate to the goals of the Upward Bound Program.

(h) *Institutional and community support.* (15 points)

(1) The Secretary reviews each application for information that shows how the applicant plans to increase the awareness of, and gain the support of, the institution and the local community in fulfilling project goals.

(2) The Secretary looks for information that shows—

(i) (10 points) The extent to which the applicant has identified institutional, community, and other resources to supplement authorized activities; and

(ii) (5 points) The existence of a plan to inform the residents of the target area, target schools, and the institutional community of—

(A) The goals and objectives of the Upward Bound project; and

(B) The selection criteria for acceptance into the project.

(20 U.S.C. 3474; 1070d, 1070d-1a)

§ 645.32 Prior experience.

(a)(1) The Secretary gives priority to each applicant that has conducted an Upward Bound project within the three fiscal years prior to the fiscal year for which the applicant is applying.

(2) To determine the number of priority points to be awarded each eligible applicant, the Secretary considers the applicant's prior experience of service delivery in accordance with paragraphs (b) and (c) of this section.

(b)(1) The Secretary may add from one to fifteen points to the point score obtained on the basis of the selection criteria in § 645.31, based on the applicant's success in meeting the administrative requirements and programmatic objectives of paragraph (c) of this section.

(2) The maximum possible score for each criterion is indicated in the parentheses preceding the criterion.

(c) The Secretary—based on information contained in one or more of the following: Performance reports, audit reports, site visit reports, project evaluation reports, the previously funded application, the negotiated program plan(s), and the application under consideration—looks for information that shows—

(1) (3 points) The extent to which the project has served the number of participants it was funded to serve;

(2) (3 points) The extent to which the project has generated the skills and motivation in project participants that are necessary for admission to an educational program beyond high school;

(3) (3 points) The extent to which the project participants, upon completion of project services, undertake a program of postsecondary education;

(4) (3 points) The extent to which the applicant has achieved other goals and objectives as stated in the previously funded application or negotiated program plan; and

(5) (3 points) The extent to which the applicant has met the administrative requirements—including recordkeeping, reporting, and financial accountability—under the terms of the previously funded award.

(20 U.S.C. 1070d, 1070d-1a; Senate Report 96-733, 96 Cong. 1st Sess. p. 28)

[47 FR 24944, June 8, 1982]

EFFECTIVE DATE NOTE: At 47 FR 24944, June 8, 1982, § 645.32 was added effective July 23, 1982.

Subpart E—What Conditions Must Be Met by a Grantee?

§ 645.40 Allowable costs.

Allowable project costs not specifically covered by 34 CFR Part 74 may include the following costs reasonably related to carrying out an Upward Bound Project:

(a) In-service training of project staff.

(b) Rental of space if space is not available at the host institution and the space rented is not owned by the host institution.

(c) For participants in an Upward Bound residential summer component, room and board—computed on a weekly basis—not to exceed the weekly rate the host institution charges regularly enrolled students at the institution.

(d) Room and board for those persons responsible for dormitory supervision of participants during a residential summer component.

(e) Other means for Upward Bound participants while participating in project activities.

(f) Student activities fees for Upward Bound participants.

(g) Admission fees, transportation, and other costs necessary to participate in field trips, attend educational activities, visit museums, and attend other events that have as their purpose the intellectual, social, and cultural development of participants.

(h) Costs for one project-sponsored banquet or ceremony.

(i) Tuition costs for postsecondary credit courses at the host institution for participants in the bridge summer component.

(j)(1) Accident insurance to cover any injuries to a project participant while participating in a project activity; and

(2) Medical insurance and health service fees for the project partici-

pants while participating full-time in the summer component.

(k) Courses in English language instruction for participants with limited proficiency in English if these classes are limited to project participants and if these classes are not otherwise available at a target school.

(l) Transportation costs of participants for regularly scheduled project activities.

(m) Transportation, meals, and overnight accommodations for staff members when they are required to accompany participants in project activities, such as field trips.

(20 U.S.C. 1070d, 1070d-1a)

§ 645.41 Nonallowable costs.

Costs that may not be charged against a grant under this program include the following:

(a) Duplication of services that are available to participants through—

(1) State, local, or private sources;

(2) The institution or agency sponsoring the project; or

(3) Other Federal programs.

(b) Research not directly related to the evaluation or improvement of the project.

(c) Purchase of any equipment, unless the grantee demonstrates to the Secretary's satisfaction that purchase is less expensive than renting.

(d) Meals for staff except as provided in § 645.40(d) and (m) and in paragraph (f) of this section.

(e) Clothing.

(f) Room and board for administrative and instructional staff personnel who do not have responsibility for dormitory supervision of project participants during a residential summer component unless these costs are approved by the Secretary.

(g) Room and board for participants in Veterans Upward Bound projects.

(h) Construction, renovation, or remodeling of any facilities.

(i) Tuition, stipends, or any other form of student financial support for project staff.

(20 U.S.C. 1070d, 1070d-1a)

§ 645.42 Stipends.

(a) An Upward Bound project may provide stipends for all participants who participate on an essentially full-time basis.

(b) In order to receive the stipend, the participant must show evidence of satisfactory participation in activities of the project including—

(1) Regular attendance; and

(2) Performance in accordance with standards established by the grantee and described in the application.

(c) The grantee may prorate the amount of the stipend according to the number of scheduled sessions in which the student participated.

(d) The following rules govern the amounts of stipends a grantee is permitted to provide:

(1) *For regular Upward Bound projects*—

(i) For the academic year component, the stipend may not exceed $40 per month; and

(ii) For the summer component the stipend may not exceed $60 per month.

(2) *For veterans Upward Bound projects*, the stipend may not exceed $40 per month.

(20 U.S.C. 1070d, 1070d-1a)

§ 645.43 Other requirements of a grantee.

Each grantee shall—

(a) Engage a full-time project director. However, the Secretary may waive the full-time requirement as specified in EDGAR, 34 CFR 75-511; and

(b)(1) Determine the eligibility of each participant at the time that individual is selected to participate in the project.

(2) The grantee does not have to revalidate a participant's eligibility after this time.

(20 U.S.C. 1070d, 1070d-1a)

PART 646—SPECIAL SERVICES FOR DISADVANTAGED STUDENTS PROGRAM

Subpart A—General

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646.5 Regulations that apply to the Special Services Program.
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Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

646.10 Kinds of projects the Secretary assists under the Special Services Program.

Subpart C—How Does One Apply for a Grant?

646.20 Assurances.

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646.31 Selection criteria the Secretary uses.
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Subpart E—What Conditions Must Be Met by a Grantee?

646.40 Allowable costs.
646.41 Nonallowable costs.
646.42 Other requirements of a grantee.

AUTHORITY: Secs. 417A and 417D of the Higher Education Act of 1965, as amended (20 U.S.C. 1070d; 1070d-1b), unless otherwise noted.

SOURCE: 47 FR 9150, Mar. 3, 1982, unless otherwise noted.

Subpart A—General

§ 646.1 Special services for disadvantaged students program.

The special services for disadvantaged students program—referred to in these regulations as the Special Services program—provides Federal financial assistance to projects designed to assist qualified postsecondary students through services such as those described in § 646.10.

(20 U.S.C. 1070d, 1070d-1b)

§ 646.2 Eligible applicants.

Institutions of higher education are eligible to apply for grants to carry out Special Services projects.

(20 U.S.C. 1070d, 1070d-1b)

§ 646.3 Eligible project participants: General.

An individual is eligible to participate in a Special Services project if the individual—

(a)(1) Is a citizen or national of the United States;

(2) Is a permanent resident of the United States;

(3) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(4) Is a permanent resident of the Trust Territory of the Pacific Islands;

(b) Is enrolled or accepted for enrollment in the next enrollment period at the grantee institution;

(c) Has a need for academic support in order to successfully pursue a postsecondary educational program; and

(d) Is, at the time of initial selection—

(1) A low-income individual;

(2) A first-generation college student; or

(3) Physically handicapped.

(20 U.S.C. 1070d, 1070d-1b)

§ 646.4 Eligible project participants: Selection requirements.

(a) At least two-thirds of the eligible individuals an applicant proposes to serve under a Special Services project must be—

(1) Physically handicapped; or

(2) Low-income individuals who are first-generation college students.

(b) The remaining individuals the applicant proposes to serve under the Special Services project must be—

(1) Physically handicapped;

(2) Low-income individuals; or

(3) First-generation college students.

(c) A "low-income individual" means an individual whose family's taxable income did not exceed 150 percent of the poverty level in the calendar year preceding the year in which the individual participates in the project. Poverty level income is determined by using criteria of poverty established by the Bureau of the Census, U.S. Department of Commerce.

(d)(1) A "first-generation college student" means a person neither of whose parents received a bachelor's degree.

(2) With respect to individuals 18 years of age and under, only the natural or adoptive parents who are currently residing with the individual are considered the individual's parents in determining whether the individual meets the criterion of being a first-generation college student.

(3) With respect to individuals over 18, only the natural or adoptive parents who were residing with the individual before the individual's eighteenth birthday are considered the individual's parents in determining whether the individual meets the criterion of being a first-generation college student.

(e) "Physically handicapped," with reference to an individual, means a person who, because of a physical disability, needs specifically designed instructional materials or programs, modified physical facilities, or related services in order to participate fully in the experience and opportunities offered by postsecondary educational institutions.

(20 U.S.C. 1070d, 1070d-1b; House Report 96-520, 96 Cong. 1st Sess. p. 26 (1979) and Senate Report 96-733, 96 Cong. 2nd Sess. p. 26 (1980))

§ 646.5 Regulations that apply to the Special Services program.

The following requirements apply to the Special Services program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (Definitions).

(b) The regulations in this Part 646.

(20 U.S.C. 1070d, 1070d-1b and 3474)

§ 646.6 Definitions that apply to the special services program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Award
Budget
EDGAR
Equipment
Facilities
Fiscal year
Grant
Grantee
Nonprofit
Private
Project
Public
Secretary
State
Supplies

(20 U.S.C. 1070d, 1070d-1b, 1221e-3)

(b) *Definitions that apply to this part.* The following definitions apply to this part:

"Act" means the Higher Education Act of 1965, as amended. (20 U.S.C. 1001 et seq.)

"Institution of higher education" means an educational institution as defined in sections 1201(a) and 481 of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1141(a), 1088)

"Limited proficiency in English," with reference to an individual, means an individual—

(1)(i) Who was not born in the United States;

(ii) Whose native language is other than English;

(iii) Who comes from an environment in which a language other than English is most relied upon for communication; or

(iv) Who is an American Indian or Alaskan Native student and comes from an environment in which a language other than English has had a significant impact on his or her level of proficiency in the English language; and

(2) Who, as a result of the circumstances described in paragraph (1) of this definition, is unable to learn successfully in classrooms in which the language of instruction is English because he or she cannot adequately understand, speak, read or write the English language.

(20 U.S.C. 3223(a)(1))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 646.10 Kinds of projects the Secretary assists under the special services program.

(a) The Secretary gives consideration to an application for a Special Services project that proposes to provide services such as—

(1) Instruction in reading, writing, study skills, mathematics, and other subjects necessary for success beyond high school;

(2) Personal counseling;

(3) Academic advice and assistance in course selection;

(4) Tutorial services;

(5) Exposure to cultural events and academic programs not usually available to disadvantaged students;

(6) Activities designed to acquaint students participating in the project with the range of career options available to them;

(7) Activities designed to assist students participating in the project in securing admission and financial assistance for enrollment in graduate and professional programs; and

(8) Programs and activities as described in paragraphs (a) (1) through (7) of this section which are specially designed for students of limited proficiency in English.

(b) The Secretary will consider an application that proposes to carry out activities in addition to the ones listed in paragraph (a) of this section if the activities support the purposes of the Special Services program.

(20 U.S.C. 1070d, 1070d-1b)

Subpart C—How Does One Apply for a Grant?

§ 646.20 Assurances.

An applicant shall submit as part of its application an assurance that each participant enrolled in the project will receive sufficient financial assistance to meet the student's full financial need.

(20 U.S.C. 1070d, 1070d-1b)

Subpart D—How Does the Secretary Make a Grant?

§ 646.30 How the Secretary evaluates an application for a new award.

(a) The Secretary evaluates an application on the basis of the criteria in § 646.31.

(1) The Secretary awards up to 100 points for these criteria.

(2) The maximum possible score for each complete criterion is indicated in parentheses next to the heading of that criterion.

(b) For applicants that have conducted a Special Services project within the three fiscal years prior to the fiscal year for which the applicant is applying, the Secretary considers the experience of the applicant on the basis of § 646.32.

(c) In the final selection of similarly rated applications, the Secretary considers the relative need for a project in the applicant institution as compared to the need in other applicant institutions.

(20 U.S.C. 1070d, 1070d-1b)

§ 646.31 Selection criteria the Secretary uses.

The Secretary uses the criteria in paragraphs (a) through (h) of this section to evaluate applications for new awards:

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups; and

(B) Women.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of each person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need for the project at the applicant institution.* (25 points)

(1) The Secretary reviews each application for information that shows that a need for a Special Services project exists at the institution applying for a grant.

(2) The Secretary looks for information that shows—

(i) (9 points) The number and percentage of students enrolled or accepted for enrollment at the institution who meet the eligibility requirements of § 646.3;

(ii) (8 points) The academic and other problems that eligible students encounter at the institution; and

(iii) (8 points) A comparison between students who would be eligible for Special Services and the total enrollment at the institution on the following factors:

(A) Attrition rates.

(B) Grade point averages.

(C) Graduate and professional school enrollment rates.

(g) *Likelihood of success.* (20 points)

(1) The Secretary reviews each application for information that shows the likelihood of success of the proposed project.

(2) To determine the likelihood of success, the Secretary looks for information that shows the comprehensiveness of the applicant's plan for—

(i) (4 points) Identifying students eligible to be served by the project and selecting participants from those eligible;

(ii) (4 points) Conducting an individual needs assessment of supportive services for each participant selected;

(iii) (10 points) Providing—through the project, the institution, or other sources—those activities listed in § 646.10(a) that the applicant chooses to propose, and any other activities that the applicant proposes that relate to the goal of the program; and

(iv) (2 points) Locating the project in an area that is accessible to participants, especially handicapped participants.

(h) *Institutional commitment.* (15 points)

(1) The Secretary reviews each application for information that shows the commitment of the applicant to the Special Services project.

(2) The Secretary looks for information that shows—

(i) (3 points) The degree to which the administrative and academic policies, grading systems, retention policies, and probation procedures indicate institutional commitment to the participants' chances for graduating from the institution;

(ii) (5 points) (A) The extent to which the institution has made available, in the previous three years, educational opportunities for low-income students, first-generation college students, and physically handicapped students; and

(B) The efforts of the institution to retain these students and to improve their chances of graduating from the institution;

(iii) (3 points) The extent to which the project director will contribute to administrative and academic policies that affect participants' chances of completing an educational program at the institution;

(iv) (2 points) The extent to which the applicant proposes to inform the institutional community of the goals and objectives of the Special Services project; and

(v) (2 points) The extent to which the applicant will make available to the project institutional resources, including the commitment of time from institutional faculty and staff.

(20 U.S.C. 1070d, 1070d-1b and 3474)

§ 646.32 Prior experience.

(a)(1) The Secretary gives priority to each applicant that has conducted a Special Services project within the three fiscal years prior to the fiscal year for which the applicant is applying.

(2) To determine the number of priority points to be awarded each eligible applicant, the Secretary considers the applicant's prior experience of service delivery in accordance with paragraphs (b) and (c) of this section.

(b)(1) The Secretary may add from one to fifteen points to the point score obtained on the basis of the selection criteria in § 646.31, based on the applicant's success in meeting the administrative requirements and programmatic objectives of paragraph (c) of this section.

(2) The maximum possible score for each criterion is indicated in the parentheses preceding the criterion.

(c) The Secretary—based on information contained in one or more of the following: Performance reports, audit reports, site visit reports, project evaluation reports, the previously funded application, the negotiated program plan(s), and the application under consideration—looks for information that shows—

(1) (2 points) The extent to which the project has served the number of participants it was funded to serve;

(2) (1 point) The extent to which project participants were awarded sufficient financial assistance—grants-in-aid, tuition waivers, and other forms of financial assistance—to meet the participants' full financial need for attendance requirements at the grantee institution;

(3) (3 points) The extent to which project participants persisted toward completion of the academic programs in which they are enrolled;

(4) (3 points) The extent to which project participants met institutional academic performance levels required to stay in good standing at the grantee institution;

(5) (3 points) The extent to which the applicant has achieved other goals and objectives as stated in the previously funded application or negotiated program plan;

(6) (3 points) The extent to which the applicant has met the administrative requirements—including recordkeeping, reporting, and financial accountability—under the terms of the previously funded award.

(20 U.S.C. 1070d, 1070d-1b; Senate Report 96-733, 96 Cong. 1st Sess. p. 28)

[47 FR 24944, June 8, 1982]

Effective Date Note: At 47 FR 24944, June 8, 1982, § 646.32 was added effective July 23, 1982.

Subpart E—What Conditions Must Be Met by a Grantee?

§ 646.40 Allowable costs.

Allowable project costs, not specifically covered by 34 CFR Part 74, may include the following costs reasonably related to carrying out a Special Services project:

(a) Cost of remedial and special classes if—

(1) These classes are limited to project participants; and

(2) The institution does not provide identical instruction—

(i) As part of its program of instruction; or

(ii) Through another Federal program or a State, local, or privately funded program.

(b) Courses in English language instruction for students of limited proficiency in English if these classes are—

(1) Limited to project participants; and

(2) Not otherwise available.

(c) In-service training of project staff.

(d) Activities of an academic or cultural nature, such as field trips, special lectures, and symposiums, that have as their purpose the improvement of the participants' academic progress and personal development at the institution.

(e) Transportation of participants to and from approved educational and cultural activities sponsored by the project.

(20 U.S.C. 1070d, 1070d-1b)

§ 646.41 Nonallowable costs.

Costs that may not be charged against a grant under this program include the following:

(a) Costs involved in the recruiting of students for enrollment at the institution.

(b) Purchase of major equipment, unless the grantee demonstrates to the Secretary's satisfaction that purchase is required to meet the purposes of the project and is less expensive than renting.

(c) Payment of tuition, stipends, or any other form of student financial support to staff or participants.

(d) Research not directly related to the evaluation or improvement of the project.

(e) Construction, renovation, or remodeling of any facilities.

(20 U.S.C. 1070d, 1070d-1b)

§ 646.42 Other requirements of a grantee.

Each grantee shall—

(a) Engage a full-time project director. However, the Secretary may waive the full-time requirement as specified in EDGAR, 34 CFR 75.511; and

(b) Determine the eligibility of each participant at the time that the individual is selected to participate in the project. The grantee does not have to revalidate a participant's eligibility after this time.

(20 U.S.C. 1070d, 1070d-1b)

PART 647—BIOMEDICAL SCIENCES PROGRAM

Subpart A—General

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647.52 Coordination among the projects.

AUTHORITY: Title III, Part L, Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978, (Pub. L. 95-561), 20 U.S.C. 3051-3057; 92 Stat. 2223-2227, unless otherwise noted.

SOURCE: 45 FR 27392, Apr. 22, 1980, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

EFFECTIVE DATE NOTE: At 46 FR 42848, Aug. 25, 1981, Part 647 was removed effective Oct. 1, 1982.

Subpart A—General

§ 647.1 The Biomedical Sciences Program.

The Secretary awards grants to institutions of higher education to—

(a) Motivate and educate secondary school students from an economically disadvantaged background to prepare for and enter into careers in the biomedical sciences;

(b) Assist these students to develop the skills and competencies essential to success in these careers and to overcome disadvantages resulting from foreign language barriers;

(c) Instill in these students awareness and concern for the health of their families and communities; and

(d) Introduce these students to the opportunities and challenges of serving in communities that have a need for persons trained in the biomedical sciences.

(20 U.S.C. 3051)

§ 647.2 Regulations that apply to the Biomedical Sciences Program.

The following regulations apply to the Biomedical Sciences Program:

(a) The Education Department General Administrative Regulations (EDGAR) in—

(1) 34 CFR Part 75 (Direct Grant Programs); and

(2) 34 CFR Part 77 (Definitions).

(b) The regulations in this Part 647.

(20 U.S.C. 1221e-3(a)(1))

§ 647.3 Definitions.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Application
Award
Budget
Budget period
Secretary
EDGAR
Equipment
Fiscal year
Grant period
Local educational agency (LEA)
Nonprofit
Private
Project period
Public
Secondary school
Secretary
State educational agency (SEA)

(b) *Definitions in the Act.* Terms defined in the Act (section 382) include:

Applicant
Biomedical science
Full participant
Project
Public secondary school system
School of biomedical science
Talented student from an economically disadvantaged background
Target student

(c) *Program definitions.* As used in this part:

"Act" means Title III, Part A and Part L, of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978 (Pub. L. 95-561).

"Institution of higher education" means an educational institution in any State which meets the requirements in Section 1201(a) of the Higher Education Act of 1965 as amended. Two-year community colleges may qualify as "institutions of higher education."

"Nonprofit private secondary school system" means a non-public secondary school or group of secondary schools which is recognized or certified by the SEA as meeting State criteria for secondary schools.

"Rural area" means an area that is not included within a Standard Metropolitan Area (as defined by the U.S. Bureau of Census). A rural area cannot contain any city, town, borough, village, or other subcounty political unit with a population over 2,500.

"Secondary school system which has a relatively high proportion of students from an economically disadvantaged background" means a secondary school or schools which qualify as eligible school attendance areas under Titile I of the Elementary and Secondary Education Act of 1965, as amended, as having high concentrations of children from low-income families.

"Students from an economically disadvantaged background" means an individual from a family which had, during the preceding year, an income equal to 50 percent or less of the national median income for families of comparable size and (1) who is enrolled in good standing in the ninth, tenth, eleventh, or twelfth grade of a secondary school; and (2) whose access to higher educational opportunity in the biomedical sciences is significantly limited due to the income of the individual's family.

(20 U.S.C. 3052, 3053(a) and (b) 3054(a)(2)(A))

§ 647.4 Eligible applicants.

(a) The Secretary awards grants to institutions of higher education on a competitive basis under selection procedures and criteria of this part and of EDGAR.

(b) Two or more institutions of higher education may join in applying if a joint project may serve better the purpose of the program, as in rural areas.

(20 U.S.C. 3053)

§ 647.5 Eligible participants.

(a) An institution of higher education may enroll in an approved project only students who—

(1) Are talented as determined by criteria stated in § 647.6;

(2) Are from an economically disadvantaged background, as defined in §647.3(c); and

(3) (i) Reside in the area served by the secondary school system which has been designated under § 647.20(c); or

(ii) Attend a public or nonprofit private school in the area served by the secondary school system.

(b) In determining whether a student comes from an economically disadvantaged background, and is eligible to participate, an applicant or an LEA may request the parents to provide a statement regarding their annual income.

(c) A student who qualifies as being from an economically disadvantaged background remains eligible for purposes of paragraph (a)(2) of this section through the duration of the project regardless of any change in family income.

(d) An institution of higher education may enroll in a project—

(1) Eligible students who are in the ninth or tenth grade; and

(2) Eligible students who are in the eleventh or twelfth grade who have participated satisfactorily for at least 100 clock hours of project activities in the project or in a program comparable to the project during the student's enrollment in the ninth or tenth grade.

(e) Talented students who do not qualify as coming from economically disadvataged backgrounds may participate in project activities, provided that—

(1) No Federal funds provided under this part are used to provide services for those students; and

(2) Their number does not exceed 15 percent of the number of talented economically disadvantaged students enrolled in the project.

(f) The project may include among its students who are considered to come from a comparable program only those students who—

(1) Transferred to the project school from another school having a similar project in which the student participated satisfactorily for at least 100 clock hours of project activities during the academic year; or

(2) Participated satisfactorily during an academic year for at least 100 clock hours of project activities—but who are no longer enrolled—in a program having similar objectives and providing similar experiences as the Biomedical Sciences Program. Certain Upward Bound and Talent Search projects may qualify if they provide similar activities and meet similar objectives.

(g) The project may enroll in its summer session only students who were full participants during the previous academic year. Students are not required to participate in the summer session.

(20 U.S.C. 3052 (7), (8), and (9), 3054(a) (4) and (10))

§ 647.6 Selection of students.

(a) An applicant shall establish criteria for the selection of students and plan for recruitment activities. The applicant shall consult on these matters with appropriate officials of the public and nonprofit private secondary schools serving the target area.

(b) The responsibility for selection of students to participate in a project rests with officials of the LEA(s) and appropriate nonprofit private schools with the concurrence of the participating institution(s) of higher education.

(c) Selection criteria shall include—

(1) Nominations of students having potential to successfully complete a course of study leading to a career in one of the biomedical sciences by at least one person from each of three of the following categories who knows a student being considered:

(i) Teachers.

(ii) Principals.

(iii) Counselors.

(iv) Parents or students.

(v) Community representatives or other appropriate persons.

(2) Information available on each student's achievement and aptitude which enables the applicant institution of higher education and the secondary schools to determine the student's potential to successfully complete a course of study leading to a career in one of the biomedical sciences; and

(3) Other criteria established by the applicant, the LEA(s) and nonprofit private school(s) involved.

(d) The grantee shall—

(1) Publicize widely to target students and their parents the opportunity to participate in the project and, before the selection process begins, inform target students and other interested persons about the criteria for selection;

(2) Ensure that individuals from non-English speaking backgrounds are not denied an opportunity for selection because of lack of proficiency in the English language;

(3) Not deny any eligible student participation in the program on the basis of a single test or selection criterion;

(4) Take due notice of difficulties inherent in traditional testing methods; and

(5) Ensure that students enrolled in nonprofit private secondary schools are provided an equitable opportunity to participate in the project.

(20 U.S.C. 3052 (7) and (8), 3054(a) (2) and (5))

Subpart B—Projects the Department Assists under This Program

§ 647.20 Nature of projects.

The Secretary funds only those projects in the Biomedical Sciences Program that meet all of the following conditions:

(a) The project is developed by the applicant in consultation with the following persons:

(1) Administrators no lower than principal or dean of public and nonprofit private secondary schools of the area.

(2) Teachers of public and nonprofit private secondary schools of the area.

(3) Interested parents.

(4) Interested target students.

(5) Interested professionals in biomedical science fields.

(b) The project is prepared in terms of a formal agreement among appropriate officials of the applicant institution, schools of biomedical sciences, and the LEA(s) involving the public and nonprofit private secondary schools of the project.

(c) The project is carried out in cooperation with a public or nonprofit private secondary school system or with a combination of these systems which has a relatively high proportion of students from an economically disadvantaged background as defined in § 647.3(c) of these regulations.

(d) The plan for the proposed project carefully outlines the respective responsibilities of all personnel directly involved in the project—as well as the commitments of resources—by the applicant institution, the school(s) of biomedical sciences involved, and the related public and nonprofit private secondary schools.

(e) A grantee provides—

(1) An intensive academic program in mathematics, the sciences, and English;

(2) Study skill development;

(3) Experiences in laboratory and health care delivery settings; and

(4) Frequent exposure to individuals trained, or receiving training, in the biomedical sciences.

(f) A grantee offers instruction and other project activities for at least 100 clock hours in each academic year at times which do not conflict with—

(1) The regular program of instruction, such as science, mathematics, and English at the school in which a student is enrolled; and

(2) To the extent feasible, the student's participation in extra-curricular activities at the school.

(g) The project includes arrangements to use—

(1) The research and other facilities and personnel of schools of biomedical science located in the area in which the project is offered;

(2) The special knowledge of individuals from economically disadvantaged backgrounds who live in the project area;

(3) The expertise of teachers in secondary schools and institutions of higher education located in the project area; and

(4) The talents and expertise of other groups, such as parent-teacher associations, foundations, civic groups, and professional organizations.

(h) The project provides counseling to students who are participants and to those who were participants in previous academic years on the range of opportunities available in the biomedical sciences upon completion of high school, college, and professional training, and on the financial and other requirements to pursue these opportunities.

(i) The project includes provisions for a summer session that will accommodate all of the target students who wish to enroll.

(j) For a summer program the grantee provides—for at least 15 hours a week during a period of at least six weeks—academic instruction, laboratory training, field work, and other experiences in biological sciences.

(k) The project provides for coordination of its activities and services with those of other public and private agencies and organizations and with other projects that are funded under this program.

(l) The project provides for the equitable participation of students enrolled in nonprofit private secondary schools in the area to be served.

(m) The fifth year of the five-year project must focus on the following:

(1) Assistance to participating target students in enrolling in post-secondary institutions and assistance to participating students who have enrolled in postsecondary institutions.

(2) Evaluation of—

(i) Students' progress; and

(ii) The effect of the project experiences on students' interests and actions in undertaking postsecondary school studies in preparation for a career in one of the biomedical sciences.

(3) Program activities for participating target students who are still enrolled in a secondary school involved in the project.

(20 U.S.C. 3051, 3054(a))

§ 647.21 Duration of projects.

(a) The Secretary approves projects for a five-year project period.

(b) Each grant for an approved five-year project period shall be for a budget period of one year.

(20 U.S.C. 3054(a)(1))

§ 647.22 Conditions required to continue projects.

(a) The applicant shall design an evaluation that will determine the eligibility of students to continue in the project in the second and subsequent years. In order to be eligible to continue in the project in any academic year, the student must have—

(1) Participated satisfactorily in at least 100 clock hours of project activities during the previous academic year;

(2) Demonstrated success for his or her grade level in science, mathematics, English, and other curriculum offerings as measured by an evaluation activity similar to one used to measure the achievement of students in regular school programs; and

(3) Demonstrated potential for success in biological sciences as measured by satisfactory performance in laboratory and other work-related experience.

(b) (1) In its first academic year, the project must enroll at least 100 talented students who are from an economically disadvantaged background and who are in the ninth grade.

(2) In order to receive funds to continue the project during the third year, not less than 50 percent of the original ninth grade students who were full participants during the first academic year must remain full participants during the second academic year.

(3) In order to receive funds to continue the project during the fourth year, not less than 25 percent of the original ninth grade students who were full participants during the first academic year must remain full participants during the third academic year.

(4) In order to receive funds to continue the project during the fifth year, not less than 12½ percent of the original ninth grade students who were full participants during the first academic year must remain full participants during the fourth academic year.

(5) Students participating in project activities under § 647.20(e) who are not from economically disadvantaged backgrounds shall not be counted for purposes of the requirements in this section.

(20 U.S.C. 3052(3), 3054(b))

§ 647.23 Information required to continue projects.

For each year of the grant, the grantee shall report to the Secretary the following information:

(a) The number of target students in public schools and the number of target students in nonprofit private schools who have participated satisfactorily in the project for at least 100 clock hours in the academic year.

(b) The number of target students in public schools and the number of target students in nonprofit private schools who will participate during the following year.

(c) Changes in the nature, scope, and schedule of activities to be conducted in the academic year program and summer program during the following year.

(d) An itemized budget for the academic year program and summer program for the following year.

(20 U.S.C. 3054(a)(1))

Subpart C—How To Apply for a Grant

§ 647.30 Procedures for applying.

In applying for a grant, an institution of higher education shall follow the procedures and meet the requirements stated in EDGAR.

(20 U.S.C. 1221e-3(a)(1), 3055)

§ 647.31 Limitation on the number of applications.

(a) An institution of higher education may submit only one application for a new project in a fiscal year for assistance under this part.

(b) During the second and subsequent years of a project, a grantee may apply for another project in competition with other applicants for new projects.

(c) An institution of higher education may receive grants for a maximum of four projects.

(20 U.S.C. 3053(b), 3055)

§ 647.32 State review of applications.

(a) The Secretary does not approve an application from an institution of higher education unless its SEA—and the State authority for higher education, if it is different from the SEA—has had an opportunity to review and comment on the application. Neither the SEA nor the State authority for higher education may disapprove an application.

(b) The applicant shall follow the requirements in 34 CFR 75.155 and 75.156 of EDGAR concerning State comment procedures.

(20 U.S.C. 3055)

Subpart D—How a Grant Is Made

§ 647.40 How the Secretary evaluates an application.

(a) The Secretary evaluates an application on the basis of criteria in § 647.41.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses next to the heading of that criterion.

(d) Among proposed projects that are judged to be relatively equal (within 10 points of one another), the Secretary—

(1) Gives priority to programs not previously offered;

(2) Gives special consideration to projects located in health manpower shortage areas (designated under section 332 of the Public Health Service Act) or in a rural area; and

(3) Takes into account the location of the projects to assure a diversity of geographic settings.

(20 U.S.C. 3053(b), 3055)

§ 647.41 Selection criteria the Secretary uses.

(a) *Plan of operation.* (17 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(vi) For grants made after October 1, 1980, a clear description of how the applicant will satisfy the applicable requirements for consultation with private school officials and opportunity for participation by private school students.

(b) *Quality of key personnel.* (13 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women; and

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to

the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (8 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

CROSS-REFERENCE: See 34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Nature and scope of the project.* (15 points)

(1) The Secretary reviews each application for information that adequately shows the nature and scope of the project.

(2) The Secretary looks for information that shows—

(i) How the project is tailored to the geographic conditions and the characteristics of the population of each area to be served;

(ii) A plan consisting of activities, procedures to carry out the activities, and anticipated results of the activities for each year and each summer session of the five-year project;

(iii) The degree to which LEA officials, teachers, representatives of nonprofit private schools, interested students and parents, community representatives, and others have participated in the design of the project;

(iv) The manner in which the applicant will select target students and an explanation of selection procedures the applicant will use to ensure objectivity;

(v) The method by which the applicant will allow talented students who are not economically disadvantaged participate in the project activities without reducing the nature and quality of services for participating target students;

(vi) The ways in which the applicant will identify the individual needs of participating target students, design appropriate programs, and provide counseling to students;

(vii) Criteria for retention of students in the project, procedures for measuring student progress, and methods to be used in identifying and analyzing any student problems and dropout conditions; and

(viii) The applicant's plans to involve parents of participating target students in—

(A) Appropriate project activities;

(B) Evaluation of student progress; and

(C) Career counseling.

(g) *Scope and variety of personnel involved in or related to projects in the biomedical sciences.* (7 points)

(1) The Secretary reviews each application for information that clearly shows that a wide variety of professional personnel are involved in or related to the project.

(2) The Secretary looks for information that shows—

(i) The variety of professional persons—such as representatives from professional medical and dental societies, local hospitals and clinics, scientific laboratories, business firms, labor organizations, and voluntary and civic groups—who will assist, counsel, or motivate project participants; and

(ii) The services that principals, teachers, counselors, and other secondary school personnel involved will provide to facilitate the full participation of target students and to supplement the services and resources provided by the applicant.

(h) *Training of personnel involved in or related to projects in the biomedical sciences.* (5 points)

(1) The Secretary reviews each application for information that shows that personnel involved in the project receive quality training.

(2) The Secretary looks for information that shows—

(i) Activities to assist university faculty members and consultants to understand the characteristics and needs of participating target students and to adjust their instructional and counseling methods accordingly; and

(ii) Activities to train secondary school teachers to modify or strenghten their instruction and train counselors to provide special services so that the special activities of the project and the regular school program will be mutually supplementary to the benefit of each participating target student.

(i) *Cooperation among institutions, agencies, and organizations.* (10 points)

(1) The Secretary reviews each application for information that shows how institutions, agencies, and organizations cooperate to achieve program objectives.

(2) The Secretary looks for information that shows—

(i) Procedures to be used for coordinating services and resources—public, professional, voluntary, private, and civic agencies, organizations, and institutions—concerned with motivating and helping economically disadvantaged youth to seek careers in the biomedical sciences;

(ii) Procedures to coordinate project activities with the participating target students' regular program of studies in the secondary schools; and

(iii) Plans for coordinating the project with other Federal and State programs for the economically disadvantaged that will help meet current student needs and enrich their experiences, and for assisting the students to seek and participate in programs that provide opportunity for postsecondary school study in the biomedical sciences.

(j) *Quality of dissemination.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of project dissemination.

(2) The Secretary looks for information that shows—

(i) Plans for identifying successful practices, materials, and other results from the project;

(ii) Plans for assisting the participating LEAs and nonprofit private schools to incorporate practices, materials, and other results into their regular educational programs in order to apply the benefits of the project to other students as early as possible; and

(iii) Plans to make information about the project available to interested agencies and institutions and the general public.

(20 U.S.C. 1221e-3(a)(1), 3055)

Subpart E—Conditions That Must Be Met by a Grantee

§ 647.50 Allowable costs.

(a) Grants to institutions of higher education are governed by the provisions of EDGAR and the Act (section 386).

(b) A grantee may use funds awarded under this part to meet the cost of project activities (section 384(a)) and of other direct and indirect costs of project activities. These costs may include, but are not limited to the following:

(1) Stipends and necessary travel expenses of university faculty members and consultants directly incurred as a result of the project.

(2) Stipends for participating target students that meet the following conditions:

(i) During the academic year, a stipend—based on a minimum of 100 hours of participation per academic year—is not to exceed $30 per month.

(ii) The grantee shall prorate the amount of the stipend according to the number of hours during which the target student participated each month.

(iii) The participating target student shall receive no additional pay from project funds for work performed as a part of project activities.

(3) Transportation for participating target students for field trips or other activities away from project sites in the most economically feasible manner.

(4) Meals and housing for participating target students provided by the institution in special cases—e.g., weekend residential workshops, special events, or field trips—only if these costs cannot be met in any other feasible way.

(5) Stipends for personnel to work with participating target students, provided this work is not a part of their normal assignment or working day.

(6) Transportation and meals for educational personnel who are working with target students to participate in project activities that are specifically explained in the application, if these costs cannot be met in any other feasible way.

(7) Transportation and meals for parents of target students to participate in special events related to the project which are specifically explained in the application, if these costs cannot be met in any other feasible way.

(c) (1) The grantee may use funds for summer sessions for expenditures similar to those stated in § 647.50(b), except that a stipend for each participating target student shall be no more than the prevailing minimum wage based on full-time participation not to exceed 20 hours per week.

(2) In order to receive a stipend, a participating target student must provide evidence of satisfactory participation in summer project activities, including—

(i) Regular attendance; and

(ii) Performance in accordance with standards established by the grantee and described in the application.

(20 U.S.C. 3054(a), 3056)

§ 647.51 Non-allowable costs.

(a) The grantee may not use project funds for any cost that any institution or agency involved in the project would incur if a project were not in operation.

(b) The grantee may not use project funds for any additional costs related to providing instruction, training, or other services under § 647.5(e) for talented secondary school students who do not qualify as economically disadvantaged.

(c) The grantee may not use project funds for any costs related to construction, renovation, or remodeling of any facilities.

(20 U.S.C. 3054, 3056)

§ 647.52 Coordination among the projects.

During the project period, each of the grantees shall cooperate and coordinate efforts with all other grantees through activities, including the following:

(a) An exchange of materials and information describing project participants, activities, facilities, and resources.

(b) An exchange of evaluation designs and reports.

(c) Consultation among project directors.

(20 U.S.C. 3055(b))

PART 648—INSTITUTIONAL GRANTS FOR GRADUATE AND PROFESSIONAL STUDY

Subpart A—General

Sec.

648.1 Institutional grants for graduate and professional study.
648.2 Eligible parties.
648.3 Regulations that apply to the Institutional Grant Program.
648.4 Definitions.

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

648.10 Eligible activities.

Subpart C—How is Application Made for a Grant?

648.20 How does one apply for funds?

Subpart D—How is a Grant Made?

648.30 How does the Secretary evaluate an application?
648.31 What selection criteria does the Secretary use?

Subpart E—What Conditions Must a Grantee Meet?

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648.40 Costs.

AUTHORITY: Part A of Title IX of the Higher Education Act as amended by Pub. L. 96-374 (94 Stat. 1367, 1487; 20 U.S.C. 1134-1134b)

SOURCE: 46 FR 37867, July 22, 1981, unless otherwise noted.

Subpart A—General

§ 648.1 Institutional grants for graduate and professional study.

Institutional Grants for Graduate and Professional Study—referred to in these regulations as the Institutional Grant Program—provide Federal financial assistance to enable institutions of higher education to maintain, strengthen, and improve the quality of graduate and professional programs leading to an advanced degree (other than a medical degree); to establish, strengthen, and improve programs designed to prepare graduate and professional students for public service; and to strengthen undergraduate degree programs when it is determined such undergraduate programs are prerequisite to undertaking graduate or professional programs leading to advanced degrees.

(20 U.S.C. 1134)

[47 FR 11866, Mar. 19, 1982]

§ 648.2 Eligible parties.

An institution of higher education is eligible to apply for a grant under this program on its own behalf, or on behalf of a group of institutions of higher education.

(20 U.S.C. 1134; 1134b(b)(4))

§ 648.3 Regulations that apply to the Institutional Grant Program.

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (Definitions); and

(b) The regulations in this Part 648.

(20 U.S.C. 1221e-3, 1134-1134b)

§ 648.4 Definitions.

(a) *Definition in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Award
Budget Period
Department
EDGAR
Secretary

(b) *The following definitions apply specifically to this Part:* "Act" means the Higher Education Act of 1965, as amended.

"Professional study" means post-baccalaureate study leading to the advanced degree that enables an individual to enter a professional career.

(20 U.S.C. 1221e-3, 1134-1134b)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 648.10 Eligible activities.

Eligible activities include, but are not limited to, the following: Faculty improvement; maintenance and improvement of quality of graduate and professional programs of study; acquisition of appropriate instructional equipment and materials; cooperative arrangements among graduate and professional schools; strengthening graduate and professional school administration; development of proposed graduate and professional programs; and needed innovation in graduate and professional programs.

(20 U.S.C. 1134b(b))

Subpart C—How Is Application Made for a Grant?

§ 648.20 How does one apply for funds?

(a) To apply for funds, an institution of higher education shall submit an application that responds to the criteria described in § 648.31.

(b) An application under this part must include the following:

(1) A description of the proposed graduate or professional project which contributes to achieving the program's goals.

(2) An assurance that the appropriate State entity that performs planning functions under Title I of the Act has been given an opportunity to offer recommendations on the application both to the applicant and to the Secretary.

(20 U.S.C. 1134a(b), 1143)

Subpart D—How Is a Grant Made?

§ 648.30 How does the Secretary evaluate an application?

(a) For applications of substantially equal quality, the Secretary gives priority to projects that strengthen activities that support Graduate and Professional Opportunities Fellowships and Public Service fellowships funded under Title IX-B of the Act.

(b)(1) The Secretary evaluates an application on the basis of the criteria in § 648.31.

(2) The Secretary awards up to 100 possible points for these criteria.

(3) The maximum possible score for each criterion is indicated in parentheses following the title of the criterion.

(20 U.S.C. 1134a(b))

§ 648.31 What selection criteria does the Secretary use?

(a) *Plan of operation.* (15 points) (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (15 points) (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraph (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points) (1) The Secretary reviews each application for information that shows the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points) (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project, and, to the extent possible, are objec-

tive and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points) (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Strength of the academic program.* (15 points) The Secretary reviews each application for information that shows that the overall graduate or professional academic program of the institution is strong enough to assure the success of the proposed project.

(g) *Impact of the project on the institution.* (15 points) The Secretary reviews each application for information that shows the project's proposed activities are likely to result in maintaining, strengthening, or improving programs in graduate and professional study in relation to the identified needs.

(h) *Activities proposed for underrepresented groups.* (10 points) The Secretary reviews each application for information that shows the project proposes activities that would assist in providing graduate and professional education to persons with varied backgrounds and experiences including, but not limited to, members of minoriy groups and women who are underrepresented in colleges and universities and in the academic and professional career fields to which the education leads.

(i) *Cooperative arrangements.* (5 points) The Secretary reviews each application for information that shows that in planning the project, the institution has considered, and where appropriate, has entered into cooperative arrangements with other graduate or professional units of the institution, and/or outside institutions or agencies in supportive efforts of mutual benefit.

(j) *Local, State, or national priorities.* (5 points) The Secretary reviews each application for information that shows the project is consistent with local, State, or national priorities. Any national priorities will be determined on the basis of documentation of national needs in the application submitted.

(20 U.S.C. 1134; 1134a(c))

Subpart E—What Conditions Must a Grantee Meet?

§ 648.40 Costs.

Funds awarded under these regulations may not be used for:

(a) Payment in excess of 66⅔ percent of the total cost of the approved project or activity;

(b) Payment in excess of 50 percent of the cost of the purchase or rental of books, audiovisual aids, scientific apparatus, or other materials or equipment, less any percent of such cost, as determined by the Secretary, that is paid from sums received (other than under this part) as Federal financial assistance; and

(c) Fellowship assistance to students.

(d) Sectarian instruction or religious worship, or primarily in connection with any part of the program of a school or department of divinity.

(20 U.S.C. 1134b(c))

PART 649—FELLOWSHIPS FOR GRADUATE AND PROFESSIONAL STUDY

Subpart A—General

Sec.

649.1 Fellowships for Graduate and Professional Study.
649.2 Eligible parties.
649.3 Regulations that apply to the fellowship Program.
649.4 Definitions.

Subpart B—How Does an Institution Apply for and Obtain Approval of its Programs?

649.10 How to apply for funds.
649.11 How does the Secretary evaluate an application?
649.12 What selection criteria does the Secretary use for Graduate and Professional Opportunity Fellowships?
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649.14 What selection criteria does the Secretary use for Domestic Mining and Mineral and Mineral Fuel Conservation Fellowships?

Subpart C—How Does a Person Apply for a Fellowship?

649.20 Application procedure.

Subpart D—How Are Fellows Selected?

649.30 What are the criteria for selecting fellows?

Subpart E—What Conditions Must Be Met by an Institution and a Fellow?

649.40 Tenure of fellowship.
649.41 Vacated fellowships
649.42 Fellowship conditions.

Subpart F—What are the Administrative Responsibilities of the Institution?

649.50 Amount of a fellowship.
649.51 Institutional allowance.
649.52 Payment procedures.

AUTHORITY: Part B of Title I of the Higher Education Act, as amended by Pub. L. 96-374 (94 Stat. 1367, 1487; 20 U.S.C. 1134e-1134g), unless otherwise noted.

SOURCE: 46 FR 3401, Jan. 19, 1981, unless otherwise noted.

Subpart A—General

§ 649.1 Fellowships for Graduate and Professional study.

(a) Fellowships for Graduate and Professional Study—referred to in these regulations as the Fellowship Program—provides Federal assistance to enable institutions of higher education to make available fellowship awards in post-baccalaureate education to graduate and professional students who demonstrate financial need.

(20 U.S.C. 1134d)

(b) An institution of higher education may apply for a grant under this program to award one or more of the following types of fellowships:

(1) *Graduate and Professional Opportunity Fellowships,* awarded to individuals from groups who are underrepresented in graduate or professional study;

(2) *Public Service Education Fellowships,* awarded to individuals who plan to pursue a career in public service;

(3) *Domestic Mining and Mineral and Mineral Fuel Conservation Fellowships,* awarded to individuals who plan to pursue advanced study in domestic mining and mineral and mineral fuel conservation, including oil, gas, coal, oil shale, and uranium.

(20 U.S.C. 1134(e))

[46 FR 3401, Jan. 19, 1981, as amended at 46 FR 55256, Nov. 9, 1981]

§ 649.2 Eligible parties.

Institutions of higher education as defined in section 1201(a) of the Act are eligible for grants under these regulations.

(20 U.S.C. 1134e; 1141(a))

[46 FR 55256, Nov. 1981]

§ 649.3 Regulations that apply to the fellowship program.

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and Part 77 (Definitions), except that §§ 75.116, 75.117, and 75.232 are inapplicable to this program; and §§ 75.510-.568 are inapplicable to the institutional allowances to institutions of higher education under this program.

(b) The regulations in this Part 649.

(20 U.S.C. 1221e-3)

§ 649.4 Definitions.

(a) The following terms used in this part are defined in 34 CFR Part 77 (EDGAR):

Applicant
Application
Award
Budget Period
Department
Secretary

(b) The following definitions apply specifically to this part:

"Academic area" means a professional school, academic department, or similar organizational unit within an institution of higher education.

"Academic career beyond high school" means a career as a teacher, administrator, or educational specialist at some level of postsecondary education.

"Act" means the Higher Education Act of 1965, as amended.

"Domestic mining" means the process of extracting from the earth mineral and mineral fuel resources of the United States.

"Fellow" means a fellowship recipient.

"Fellowship" means an award made by an institution of higher education to a person for graduate or professional study under Title IX-B of the Act.

"Financial need" means the difference between a student's projected costs for the year—including books, materials, supplies, room and board, and other reasonable costs—and the student's resources, including available income and other available assets as determined by the institution of higher education that the student will be attending.

"Independent institution" means an institution of higher education, other than one that is publicly controlled, that meets the definition of an institution of higher education in section 1201(a) of the Act.

"Mineral and mineral fuel conservation" is the means by which an adequate supply of the Nation's nonrenewable resources is maintained through exploration of new sources, more efficient extraction of existing reserves, or better use of already processed minerals and mineral fuels.

"Public service education" means the preparation for leadership and management careers in local, State, or national government or in nonprofit community service organizations.

"Underrepresented groups" means minorities and other groups, including women, who are underrepresented in the specific graduate area of study or profession for which the fellowship is awarded.

(20 U.S.C. 1134d-1134g)

[46 FR 3401, Jan. 19, 1981, as amended at 46 FR 55256, Nov. 9, 1981]

Subpart B—How Does an Institution Apply for and Obtain Approval of its Program?

§ 649.10 How to apply for funds.

(a) In order to apply for a grant under this part, an institution of higher education must submit an application that responds to the appropriate criteria in §§ 649.12, 649.13, and 649.14.

(b) The application must describe how the institution of higher education will select eligible individuals to receive fellowships. This description must include evidence that the selected individual—

(1) Will achieve the academic goals of the fellowship; and

(2) Can demonstrate a level of financial need based on the institution's method or methods which the Secretary approves for determining financial need. An institution may—

(i) Use its own financial need analysis system, which may or may not incorporate or adapt a more general system such as that provided by the College Scholarship Service (CSS), the American College Testing Service (ACT), or the Graduate and Professional School Financial Aid Service (GAPSFAS); or

(ii) Use exclusively one of the systems referred to in paragraph (b)(2)(i) of this section; or

(iii) Using a system described in either paragraph (b)(2) (i) or (ii) of this section, also take into account—as evidence of financial need—an individual's receipt of fellowship assistance under this program.

(20 U.S.C. 1134f(a))

[46 FR 3401, Jan. 19, 1981, as amended at 46 FR 55256, Nov. 9, 1981]

§ 649.11 How does the Secretary evaluate an application?

(a) *Funding reservations.*

(1) The Secretary reserves funds for Graduate and Professional Opportunity Fellowships, Public Service Education Fellowships, and Domestic Mining and Mineral and Mineral Fuel Conservation Fellowships in accordance with section 922(e) of the Act (referring to the amount the Secretary is required

to expend for each category of fellowships) and applicable appropriation statutes.

(20 U.S.C. 1134e(e))

(2) Before considering applications that include support for new fellowships, the Secretary provides funds to continue support for qualified students—

(i) Who were awarded fellowships under this program in a previous year; and

(ii) Who are maintaining satisfactory progress as determined by the institution.

(20 U.S.C. 1134f(b))

(3) From the sums appropriated under this program for any fiscal year, the Secretary shall not make to a single institution of higher education a grant less than $75,000, except to the extent that payments are made for continuation fellowships only—without any new fellowship—and the total sum equals less than $75,000.

(20 U.S.C. 1134e(b))

(b) *Selection criteria.*

Subject to the funding reservations, the Secretary—in determining whether to select an institution of higher education for a grant and how many fellowships to authorize under the grant—assesses an application on the basis of the criteria in § 649.12 for Graduate and Professional Opportunity Fellowships; the criteria in § 649.13 for Public Service Education Fellowships; and the criteria in § 649.14 for Domestic Mining and Mineral and Mineral Fuel Conservation Fellowships.

(1)(i) In assessing applications for Graduate and Professional Opportunity Fellowships, the Secretary ranks each academic area in which an applicant proposes to award fellowships. The Secretary ranks each academic area according to the combined scores for institution-wide criteria and criteria for that area.

(ii) The Secretary awards up to 56 possible points for the institution-wide criteria (§ 649.12 (a)-(e)), and up to an additional 44 possible points for the criteria specific to the academic area submitted (§ 649.12 (f)-(k)).

(2) In assessing an application for Public Service Fellowships, the Secretary awards up to 100 possible points.

(3) In assessing an application for Domestic Mining and Mineral and Mineral Fuel Conservation Fellowships, the Secretary awards up to 100 possible points.

(4) The maximum possible score for each criterion is indicated in parentheses following the heading for that criterion.

(5) In evaluating an application from an institution that previously received a grant under this program, the Secretary assesses the extent to which the previously funded grant achieved its objectives.

(20 U.S.C. 1134e(d) (1) and (2))

(c) *Other considerations.*

For applications of substantially equal quality, the Secretary gives priority to applications that will contribute to achieving the following:

(1) An equitable geographic distribution of grants.

(2) An equitable distribution of awards among eligible public and independent institutions of higher education.

(20 U.S.C. 1134e(b)(1))

(3) An appropriate balance of fellowships with regard to academic areas, taking account of present and projected needs for highly trained individuals in all academic careers beyond the high school level and in other than academic career fields of high national priority.

(20 U.S.C. 1124e(d))

[46 FR 3401, Jan. 19, 1981, as amended at 46 FR 55257, Nov. 9, 1981]

§ 649.12 What selection criteria does the Secretary use for Graduate and Professional Opportunity Fellowships?

INSTITUTION-WIDE CRITERIA

(a) *Institutional commitment.* (20 points)

(1) The Secretary reviews each application for information that shows the overall strength of an institution's commitment to meet the needs of the students it proposes to serve from underrepresented groups.

(2) The institution may demonstrate this commitment in such ways as the following:

(i) The provision of evidence that the institution's social and academic environment is supportive of the academic success of students from underrepresented groups on the applicant's campus.

(ii) The availability of other sources of financial aid and support mechanisms for these students.

(iii) The hiring of faculty and administrators from underrepresented groups.

(b) *Recruitment plan.* (14 points)

(1) The Secretary reviews each application for information that describes that institution's recruitment plan.

(2) The Secretary looks for information that shows:

(i) An active, aggressive, and imaginative effort to identify and attract qualified individuals from underrepresented groups.

(ii) The applicant's previous and current efforts in attracting and successfully preparing students from underrepresented groups for careers, including Graduate and Professional Opportunity Fellows, and other graduate and professional and undergraduate students.

(c) *Net increase of underrepresented students.* (8 points)

The Secretary reviews each application for information that shows that the proposed arrangements to assign the fellowships to the approved academic areas—

(1) Will result in a net increase of students from underrepresented groups in each area; and

(2) Will not result in a decrease in the amount of the institution's own financial support available for other students from underrepresented groups in the academic area and in the institution as a whole.

(d) *Program director.* (6 points)

The Secretary reviews each application for information that shows that the director has clear responsibilities, ample time, and sufficient institutional or academic authority to coordinate the overall administration of the program.

(e) *Employment opportunities.* (8 points)

The Secretary reviews each application for information that shows that the institution's educational program leads to immediate career opportunities in the graduate or professional study areas for which students from underrepresented groups have been recruited.

ACADEMIC AREA CRITERIA

(f) *Evidence of underrepresentation.* (10 points)

The Secretary reviews each application for evidence that the students whom the institution proposes to recruit are from underrepresented groups in the proposed academic areas.

(g) *Evidence of national need.* (10 points)

The Secretary reviews each application for information that justifies the need for more highly trained individuals in academic careers beyond the high school level or in other career fields of high national priority.

(h) *Quality of academic program.* (7 points)

(1) The Secretary reviews each application for information that shows high quality of the academic program in terms of course offerings and academic requirements for students.

(2) The Secretary also looks for information that shows the appropriateness of the level of the degree to prepare the individual for an academic or professional career.

(i) *Quality of key faculty.* (7 points)

(1) The Secretary reviews each application for information that shows the qualifications of the faculty in the academic area.

(2) The Secretary looks for information that shows that the background, education, research interests, and relevant experience of the faculty qualify them to plan and implement a successful program of high academic quality.

(j) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the academic area.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment that the applicant plans to use is adequate.

(k) *Special orientations and experiences.* (5 points)

The Secretary reviews each application for information that shows the applicant plans to provide special orientations, practical experiences, and necessary assistance designed to prepare fellowship recipients for academic careers or other professional careers of high national priority.

(20 U.S.C. 1134e(d) (1) and (2); 1134e(e)(3))

[46 FR 3401, Jan. 19, 1981, as amended at 46 FR 55257, Nov. 9, 1981]

§ 649.13 What selection criteria does the Secretary use for Public Service Fellowships?

(a) *Program objectives.* (10 points)

The Secretary looks for information that demonstrates present and projected needs for highly trained individuals in the fields of public service, including academic careers beyond the high school level focused on public service education.

(b) *Underrepresented groups.* (10 points)

The Secretary reviews each application for information that demonstrates the extent to which the program provides public service education to individuals from underrepresented groups.

(c) *Quality of academic program.* (10 points)

(1) The Secretary reviews each application for information that shows high quality of the academic program in terms of course offerings and academic requirements for students.

(2) The Secretary also looks for information that shows the appropriateness of the level of the degree to prepare the individual for a career in public service.

(d) *Practical experiences and internships.* (15 points)

The Secretary reviews each application for information that shows the program offers opportunities for relevant, supervised practical experiences and internships.

(e) *Quality of key personnel.* (25 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use in its program of public service education.

(2) The Secretary looks for information that shows—

(i) The qualifications of the program director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the program;

(iii) The time that each person referred to in paragraph (e)(2)(i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the program, as well as other information that the applicant provides.

(f) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to its program of public service education.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment that the applicant plans to use is adequate.

(g) *Cooperative arrangements.* (10 points)

The Secretary reviews each application for information that shows that the program establishes arrangements with governmental agencies or other nonprofit agencies for such activities as program development, personnel exchanges among faculty and agency staff, and field workers.

(h) *Institutional cooperation.* (5 points)

The Secretary reviews each application for information that shows that the applicant has considered and, if appropriate, entered into cooperative arrangements with other graduate units of the applicant in supportive efforts of practical benefit to public service education.

(i) *Success of graduates.* (5 points)

The Secretary reviews each application for evidence of past success of graduates of the program in achieving leadership and management positions in public service careers.

(20 U.S.C. 1134e(d))

§ 649.14 What selection criteria does the Secretary use for Domestic Mining and Mineral and Mineral Fuel Conservation Fellowships?

(a) *Program objectives.* (15 points)

The Secretary reviews each application for information that shows the present and projected needs for highly trained individuals in the field of domestic mining and mineral and mineral fuel conservation—including academic careers beyond the high school level—in any of the following areas:

(1) The improvement of technologies for the efficient extraction and processing of nonrenewable minerals and mineral fuels including the development of—

(i) Improved systems of underground, underwater, and surface mining techniques;

(ii) Improved methods to protect the health and safety of people involved in extraction and processing operations; and

(iii) Improved methods to protect and restore the environment in extracting and processing operations.

(2) The development ~~of~~ ways to ensure the ~~availability~~ of nonrenewable minerals and mineral fuels through—

(i) Improved exploration or discovery techniques;

(ii) Optimum recovery of existing mineral and mineral fuel reserves;

(iii) Improved use of processed minerals and mineral fuels through recycling technology; and

(iv) Improved understanding of mineral economics.

(b) *Underrepresented groups.* (10 points)

The Secretary reviews each application for information that demonstrates the extent to which the program prepares individuals from underrepresented groups for careers in domestic mining or mineral and mineral fuel conservation.

(c) *Quality of academic program.* (20 points)

(1) The Secretary reviews each application for information that shows the high quality of the academic program in terms of course offerings and academic requirement for students.

(2) The Secretary also looks for information that shows the appropriateness of the level of the degree to prepare an individual for a career in domestic mining or mineral and mineral fuel conservation.

(d) *Quality of key personnel.* (25 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use in its program of domestic mining and mineral fuel conservation.

(2) The Secretary looks for information that shows—

(i) The qualifications of the program director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the program;

(iii) The time that each person referred to in paragraph (d)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the program, as well as other information that the applicant provides.

(e) *Adequacy of resources.* (20 points)

(1) The Secretary reviews each application for information that shows

that the applicant plans to devote adequate resources to its program of domestic mining and mineral fuel conservation.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment that the applicant plans to use is adequate.

(f) *Employment opportunities.* (10 points)

The Secretary reviews each application for information that shows that the educational program leads to immediate career opportunities in domestic mining and mineral fuel industries, including careers in teaching in those subject areas at institutions of higher education.

(20 U.S.C. 1134e(e)(2))

Subpart C—How Does a Person Apply for a Fellowship?

§ 649.20 Application procedure.

A student applies directly to an institution of higher education that has received an allocation of fellowships.

[46 FR 55257, Nov. 9, 1981]

Subpart D—How Are Fellows Selected?

§ 649.30 What are the criteria for selecting fellows?

To receive a fellowship, a person must—

(a) Have been accepted for or be enrolled in a program of study leading to a postbaccalaureate graduate degree—such as a doctor of philosophy or doctor of arts—or to a postbaccalaureate professional degree—such as doctor of jurisprudence or master of business administration—necessary for professional practice in a given field;

(b) Have been accepted for or be enrolled in the program referred to in paragraph (a) of this section at an institution of higher education that has received a grant;

(c) Plan to pursue—

(1) An academic career or some other professional career of importance in the academic area of study approved by the Secretary:

(2) A career in public service; or

(3) A career in domestic mining or mineral fuel conservation.

(d)(1) Be a national of the United States;

(2) Be in the United States for other than a temporary purpose and intend to become a permanent resident; or

(3) Be a permanent resident of the Trust Territories of the Pacific Islands.

(e) Demonstrate financial need under an approved financial need analysis system as described in § 649.10(b).

(20 U.S.C. 1134e)

Subpart E—What Conditions Must Be Met by an Institution and a Fellow?

§ 649.40 Tenure of fellowship.

(a) A fellowship award is for a period of up to 36 months.

(b)(1) A fellow who maintains satisfactory progress in his or her course of study may have the fellowship renewed annually, subject to the availability of funds.

(2) However, no fellow may receive assistance under this fellowship for more than 36 months of support except as provided in paragraph (c) of this section.

(c)(1) Depending on the availability of funds and under special circumstances, the Secretary may provide for a fellowship extension of not more than 12 months in addition to the 36 months of support a fellow receives under this program. Generally, special circumstances would be the need for additional months to complete the doctorate or equivalent degree.

(2) The institution of higher education must request approval for the additional support in its application and must request appropriate sums in the proposed budget.

(20 U.S.C. 1134f)

[46 FR 3401, Jan. 19, 1981, as amended at 46 FR 55257, Nov. 9, 1981]

§ 649.41 Vacated fellowships.

(a)(1) If a fellow vacates a fellowship prior to the end of the first year of the award, the institution of higher education to which the fellowship is allocated may reaward the fellowship to another individual.

(2) This individual must meet the eligibility requirements stated in § 649.30 and be chosen in accordance with the institution's fellowship award procedures.

(b) A fellow awarded a vacated fellowship may apply for renewal of the fellowship for up to 36 months.

(c)(1) Second and third year continuation fellowships must be for the same individual who held the fellowship at the end of the first academic year.

(2) If a continuation fellowship is vacated after the first year, it may not be awarded to another individual. The fellowship terminates at that time.

(d) If a fellow graduates at any time during tenure of the fellowship, the fellowship terminates at that time.

(20 U.S.C. 1134f(b))

§ 649.42 Fellowship conditions.

In order to continue to receive payments under a fellowship, a fellow must:

(a) Maintain satisfactory progress as determined by the institution of higher education;

(b) Devote essentially full time to study or research in the field in which the fellowship was awarded; and

(c) Not engage in gainful employment during the period of the fellowship, except on a part-time basis in teaching, research, or similar activities approved by the Secretary.

(20 U.S.C. 1134f(b))

Subpart F—What Are the Administrative Responsibilities of the Institution?

§ 649.50 Amount of a fellowship.

(a) The maximum stipend that an institution may award to any fellow for a twelve-month year is $4,500 or the fellow's financial need, whichever is less. A fellow who is enrolled in the institution's approved program for an entire academic year, that includes a summer session(s), will be considered to be enrolled in the program for the full 12 months.

(b) A fellow who is enrolled in the program for fewer than 12 months shall receive a pro rata share of the stipend.

(20 U.S.C. 1134f(a))

[46 FR 3401, Jan. 19, 1981, as amended at 46 FR 55257, Nov. 9, 1981]

§ 649.51 Institutional allowance.

(a) In accordance with section 922(f) of the Act, the Secretary pays an institutional allowance to an institution of higher education in the amount of $3,900 per 12-month period for each fellowship allocated to that institution.

(b) If the fellow is enrolled for fewer than 12 months, the Secretary pays the institution of higher education a pro rata share of this amount.

(c) If the institution of higher education charges a fellow for tuition or nonrefundable fees that are required by the institution as a part of the fellow's instructional program, the Secretary deducts that amount from the institutional allowance.

(d) The institutional allowance is in lieu of any administrative or other costs for an institution of higher education. The allowance is not subject to restrictions on allowable costs.

(20 U.S.C. 1134e(f))

§ 649.52 Payment procedures.

(a) The Secretary pays to the institution of higher education the fellowship stipends and institutional allowances.

(b) If an institution of higher education is unable to use all of the amounts available to it under this program, the Secretary will—on such dates each fiscal year as determined by the Secretary—reallot the amounts not needed to institutions of higher education which can use the grants authorized under this program.

(20 U.S.C. 1134e(f), 1134f(a))

[46 FR 3401, Jan. 19, 1981, as amended at 46 FR 55257, Nov. 9, 1981]

PART 651—TRAINING IN THE LEGAL PROFESSION

Subpart A—General

Sec.
651.1 Training in the Legal Profession.
651.2 Eligible parties.
651.3 Regulations that apply to this program.
651.4 Definitions.

Subpart B—What Kinds of Activities Does the Secretary Support Under This Program?

651.10 What kinds of support does the Secretary provide?
651.11 What activities are eligible for support?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

651.20 How does the Secretary select an award recipient?

Subpart E—What Conditions Must Be Met by an Award Recipient?

651.30 What are the limitations on allowable costs?

Authority: Part D of Title IX of the Higher Education Act of 1965, as amended by Sec. 904 of Pub. L. 96-374, 94 Stat. 1486-87 (20 U.S.C. 11341), unless otherwise noted.

Source: 46 FR 36870, July 22, 1981, unless otherwise noted.

Subpart A—General

§ 651.1 Training in the Legal Profession.

(a) The Legal Profession Training Program assists individuals from disadvantaged backgrounds to undertake training for the legal profession.

(b) The program is designed to—

(1) Help admit, to accredited law schools, disadvantaged students who, but for the program, would not have been admitted; and

(2) Assist these students in obtaining a legal education and law degree.

(20 U.S.C. 1134l)

§ 651.2 Eligible parties.

(a) Public and private agencies and organizations other than institutions of higher education are eligible to apply for grants or contracts under these regulations.

(b) The Secretary may implement this program through the award of a single grant or contract.

(20 U.S.C. 1134l(a)).

§ 651.3 Regulations that apply to this program.

(a) *Regulations for procurement contracts.* The following regulations apply to any procurement contract under the Legal Professional Training Program:

(1) Procurement regulations in 41 CFR Chapters 1 and 34; and

(2) The regulations in this Part 651.

(b) *Regulations for grants.* The following regulations apply to any grants under the Legal Profession Training Program:

(1) The Education Department General Administrative Regulations (EDGAR) in Part 75 (Direct Grant Programs) and Part 77 (Definitions).

(2) The regulations in this Part 651.

§ 651.4 Definitions.

As used in these regulations—

(a) "Act" means the Higher Education Act of 1965, as amended.

(b) "Disadvantaged backgrounds" are backgrounds involving educational, cultural, or financial deprivations that hinder individuals from successfully competing for admission to law school or from successfully completing a course of legal study. These backgrounds include but are not limited to—

(1) Family income dependent in whole or in part on public assistance or inadequate to provide for needs beyond basic necessities such as food, housing, and clothing;

(2) Rural isolation;

(3) Limited English proficiency as defined in section 703(a)(1) of the Bilingual Education Act (20 U.S.C. 3223); or

(4) Attendance at a minority group isolated school, as defined for purposes of the Emergency School Aid Act in 34 CFR 185.02(g).

(20 U.S.C. 1134l, 1221e-3)

Subpart B—What Kinds of Activities Does the Secretary Support Under This Program?

§ 651.10 What kinds of support does the Secretary provide?

Under this program the Secretary provides financial support for activities that assist individuals from disadvantaged backgrounds to undertake training for the legal profession.

(20 U.S.C. 1134l(a))

§ 651.11 What activities are eligible for support?

The following activities are eligible for support under a grant or contract awarded under this program:

(a) Selecting individuals from disadvantaged backgrounds for training for the legal profession, including disseminating information about the program to eligible students;

(b) Making arrangements with accredited law schools to arrange entry of participating students into these schools;

(c) Providing counseling and related services—both prior to and during law school training—designed to assist participating students in preparing for and completing law school training;

(d) Providing preliminary training in legal education to prepare participating students for law school.

(1) Preliminary training may include, but need not be limited to, orientation of students to the legal process, the epistemology of law, and law school learning methods; evaluation of the law school potential of students; and development of students' legal reading, research, and writing skills.

(2) Preliminary training may be provided for participating students not more than six months prior to their commencement of law school courses; and

(e) Paying stipends to participating students for any period of preliminary training and for the period of law school training, as provided in § 651.30.

(20 U.S.C. 1134l(b))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

§ 651.20 How does the Secretary select an award recipient?

(a) The Secretary decides to make one or more awards and bases selection of the award recipient(s) on a judgment of what arrangements most effectively contribute to the purposes of this program (Title IX-D of the Act).

(b) The Secretary may decide to make a non-competitive award to implement the program if—in the Secretary's judgment—there is one eligible organization that is exclusively or predominantly qualified to carry out effectively the purposes of the program in the light of legislative history of the authorizing statute.

(20 U.S.C. 1221e-3, 1134l)

Subpart E—What Conditions Must Be Met by an Award Recipient?

§ 651.30 What are the limitations on allowable costs?

Allowable costs include, but are not limited to, the following:

(a) Stipends for participating students, as determined by the Secretary, during any period of preliminary training or for the period of law school training during which the student maintains satisfactory academic progress, as determined by the Secretary.

(b) Other necessary costs for any period of training of the participating students, as determined by the Secretary.

(20 U.S.C. 1134l(b))

PART 655—INTERNATIONAL EDUCATION PROGRAMS—GENERAL PROVISIONS

Subpart A—General

Sec.
655.1 Which programs do these regulations govern?
655.3 What regulations apply to the International Education Programs?

Sec.
655.4 What definitions apply to the International Education Programs?

Subpart B—What Kinds of Projects Does the Secretary Assist?

655.10 What kinds of projects does the Secretary assist?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

655.30 How does the Secretary evaluate an application?
655.31 What general selection criteria does the Secretary use?

AUTHORITY: Secs. 601-607, Higher Education Act of 1965, as amended, 20 U.S.C. 1121-1127, unless otherwise noted.

SOURCE: 47 FR 14116, Apr. 1, 1982, unless otherwise noted.

Subpart A—General

§ 655.1 Which programs do these regulations govern?

The regulations in this part govern the administration of the following programs in international education:

(a) The National Resource Centers Program and the Foreign Language and Area Studies Fellowships Program (section 602 of the Higher Education Act of 1965);

(b) The Undergraduate International Studies and Foreign Language Program (section 604); and

(c) The International Research and Studies Program (section 605).

(20 U.S.C. 1121-1127)

§ 655.3 What regulations apply to the International Education Programs?

The following regulations apply to the International Education Programs:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (formerly 45 CFR Part 100a (Direct Grant Programs)) and 34 CFR Part 77 (formerly 45 CFR Part 100c (Definitions)).

(b) The regulations in this part 655; and

(c) As appropriate, the regulations in—

(1) 34 CFR Part 656 (National Resource Centers);

(2) 34 CFR Part 657 (Foreign Language and Area Studies Fellowships Program);

(3) 34 CFR Part 658 (Undergraduate International Studies and Foreign Language Program); and

(4) 34 CFR Part 660 (International Research and Studies Program).

(20 U.S.C. 1121-1127; 1221e-3)

§ 655.4 What definitions apply to the International Education Programs?

(a) *Definitions in EDGAR.* The following terms used in this part and 34 CFR Parts 656, 657, 658, and 660 are defined in 34 CFR Part 77:

Acquisition
Applicant
Application
Award
Budget
Contract
EDGAR
Equipment
Facilities
Fiscal year
Grant
Grantee
Grant period
Local educational agency
Nonprofit
Project
Project period
Private
Public
Secretary
State educational agency
Supplies

(20 U.S.C. 1121-1127)

(b) *Definitions that apply to these programs:* The following definition applies to International Education Programs:

"Combination of institutions of higher education" means a group of institutions of higher education that have entered into a cooperative arrangement for the purpose of carrying out a common objective, or a public or private nonprofit agency, organization, or institution designated or created by a group of institutions of higher education for the purpose of carrying out a common objective on their behalf.

"An institution of higher education" means an educational institution as defined in section 1201(a) of the Higher Education Act, as amended.

(20 U.S.C. 1121-1127, and 1141)

Subpart B—What Kinds of Projects Does the Secretary Assist?

§ 655.10 What kinds of projects does the Secretary assist?

Subpart B of 34 CFR Parts 656, 657, 658, and 660 describes the kinds of projects that the Secretary assists under the International Education Programs.

(20 U.S.C. 1021-1027)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 655.30 How does the Secretary evaluate an application?

The Secretary evaluates all applications for International Education Programs on the basis of—

(a) The general criteria in § 655.31; and

(b) The specific criteria in, as applicable, Subpart D of 34 CFR Parts 656, 657, 658, and 660.

(20 U.S.C. 1121-1127)

§ 655.31 What general selection criteria does the Secretary use?

(a) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women; and

(C) Handicapped persons.

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project. In the case of faculty, the qualifications of the faculty and the degree to which that faculty is directly involved in the actual teaching and supervision of students; and

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objec-

tive and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) Other than library, facilities that the applicant plans to use are adequate (language laboratory, museums, etc.); and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 1121-1127)

PART 656—NATIONAL RESOURCE CENTERS PROGRAM FOR LANGUAGE AND AREA OR LANGUAGE AND INTERNATIONAL STUDIES

Subpart A—General

Sec.
656.1 What is the National Resource Centers Program?
656.2 Eligible parties: National Resource Centers.
656.3 What regulations apply to the National Resource Centers Program?
656.4 What definitions apply to the National Resource Centers Program?

Subpart B—What Kinds of Projects Does the Secretary Assist under This Program?

656.10 What activities must a National Resource Center conduct?
656.11 What types of centers receive assistance?
656.12 What levels of instruction may a National Resource Center provide?

Subpart C—How Does One Apply for a Grant?

656.20 How does an institution submit an application for a Center and a quota of fellowships?

Subpart D—How Does the Secretary Make a Grant?

656.30 How does the Secretary evaluate an application under the National Resource Centers Program?
656.31 What selection criteria does the Secretary use?
656.32 [Reserved]
Sec.
656.33 What priorities may the Secretary establish for National Resource Centers?

Subpart E—What Conditions Must Be Met by a Grantee?

656.40 What are the limitations on allowable costs?

AUTHORITY: Sec. 602, Higher Education Act of 1965 as amended, 20 U.S.C. 1122, unless otherwise noted.

SOURCE: 47 FR 14118, Apr. 1, 1982, unless otherwise noted.

Subpart A—General

§ 656.1 What is the National Resource Centers Program?

The National Resource Centers Program for Language and Area or Language and International Studies (National Resource Centers Program) is designed to provide Federal funds through grants or contracts to institutions of higher education, or combinations of such institutions to establish, strengthen, and operate graduate and undergraduate centers that will be national resources—

(a) For the teaching of any modern foreign language;

(b) For instruction in fields needed to provide a full understanding of the areas, regions, or countries in which the modern language is commonly used; or

(c) For research or training in international studies and the international aspects of professional and other fields of study.

(20 U.S.C. 1122(a))

§ 656.2 Eligible parties: National Resource Centers.

An institution of higher education or a combination of institutions of higher education is eligible to apply for assistance under this part to establish or operate a National Resource Center.

(20 U.S.C. 1122(a)(1))

§ 656.3 What regulations apply to the National Resource Centers Program?

The following regulations apply to this program:

(a) 34 CFR Part 655;

(b) The regulations in this Part 656; and

(c) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Program) and 34 CFR Part 77 (Definitions).

(20 U.S.C. 1121-1127)

§ 656.4 What definitions apply to the National Resource Centers Program?

(a) The definitions in 34 CFR 655.4 apply to this program.

(b) As used in this part a "Center"-means a coordinated, concentration of the educational resources and activities described in §§ 656.10, 656.11 and 656.12. It has direct access to highly qualified faculty and advanced research or training resources and it encompasses various academic disciplines.

(20 U.S.C. 1122)

Subpart B—What Kinds of Projects Does the Secretary Assist under This Program?

§ 656.10 What activities must a National Resource Center conduct?

A National Resource Center receiving Federal assistance under this part shall—

(a)(1) Provide instruction—

(i) In any modern foreign language; or

(ii) In fields needed to provide a full understanding of the areas, regions, or countries in which that language is commonly used; or

(2) Provide training or research opportunities for students and faculty in international studies and the international aspects of professional and other fields of study.

(b) Provide outreach and consultative services on a local or regional basis as well as at the national level.

(c) If a graduate component is included, maintain specialized library collections and employ scholars engaged in research which relates to the subject area of the center.

(20 U.S.C. 1122(a); House Rept. 96-1337, 96 Cong. 2d Sess. p. 188; Sen. Rept. 96-733, 96 Cong. 2d Sess. p. 60)

§ 656.11 What types of centers receive assistance?

(a) The Secretary may assist two types of National Resource Centers.

(b) One type of center focuses on a single country or on one or more world areas (such as East Asia, Africa, or the Middle East) and offers instruction in the principal language or languages of that country or area and those disciplinary fields necessary to provide a full understanding of the country or area.

(c) The second type focuses on international studies, or on the international aspects of contemporary issues or topics (such as international business or energy) and makes instruction in modern foreign languages available to students undergoing training at the center.

(20 U.S.C. 1122(a))

§ 656.12 What levels of instruction may a National Resource Center provide?

(a) A center may provide training—

(1) At the graduate, professional, and undergraduate level:

(2) At the undergraduate level only; or

(3) At the graduate or professional level only.

(b) A four-year institution that provides instruction at the undergraduate level only must demonstrate to the Secretary in its application that its program is of national importance and is exemplary in terms of excellence and innovation.

(20 U.S.C. 1122(a); House Rept. 96-1337, 96 Cong. 2d Sess. p. 188; and Sen. Rept. 96-733 2d Sess. p. 60)

Subpart C—How Does One Apply for a Grant or Fellowship?

§ 656.20 How does an institution submit an application for a Center and a quota of fellowships?

An institution that applies for a grant to operate a center under this part and for a quota of fellowships under 34 CFR Part 657 may submit one application for both.

(20 U.S.C. 1122)

Subpart D—How Does the Secretary Make a Grant?

§ 656.30 How does the Secretary evaluate an application under the National Resource Centers and Fellowships Program?

(a) The Secretary evaluates an application for a National Resource Center under the criteria in § 656.31.

(b) In general, the Secretary awards up to 160 possible points for these criteria. However, if priority criteria are used, the Secretary awards up to 170 possible points. The maximum possible points for each criterion are shown in parentheses.

(20 U.S.C. 1122(a))

§ 656.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating applications for centers:

(a) *Plan of operation.* (15) (See 34 CFR 655.31(a))

(b) *Quality of key personnel.* (25) (See 34 CFR 655.31(b))

(c) *Budget and cost effectiveness.* (10) (See 34 CFR 655.31(c))

(d) *Evaluation plan.* (5) (See 34 CFR 655.31(d))

(e) *Adequacy of resources.* (10) (See 34 CFR 655.31(e))

(f) *Commitment to the subject area on which the center focuses.* (10)

(1) The Secretary reviews each application for information that shows the applicant's commitment to the subject area on which the center focuses. (See § 656.11)

(2) The Secretary reviews each application for information that shows—

(i) The degree of institutional commitment to the subject area for which funding is sought as shown by the institution's previous record of accomplishment and support for that subject area;

(ii) The extent to which the institution provides financial and other support to the center, to tenured faculty members of the center, and to qualified students in fields related to the center.

(g) *Strength of library.* (15) The strength of the institution's library in the subject area and the educational levels (graduate, professional, undergraduate) on which the center focuses, and the extent to which the institution provides financial support for the acquisition of library materials in that subject area.

(h) *Quality of the center's instructional program.* (25)

(1) The Secretary reviews each application for information that shows the quality of the applicant's program of instruction in the subject area on which the center focuses.

(2) The Secretary reviews each application for information that shows—

(i) The quality and extent of the center's course offerings;

(ii) The quality of the center's language training program or the quality of the language training program that is made available under § 656.11(b); and

(iii) The extent to which the center employs a sufficient number of scholars or teaching faculty to enable the center to carry out its purposes.

(i) *Quality of the center's relationships within the institution.* (10)

(1) The Secretary reviews each application for information that shows the quality of the center's relationships within the institution.

(2) The Secretary reviews each application for information that shows—

(i) The extent to which the center provides multi- and interdisciplinary instruction; and

(ii) The extent to which the center has entered into cooperative arrangements with other departments, schools, and professional programs of the institution.

(j) *Overseas activities.* (10)

(1) The Secretary reviews each application for information that shows—with regard to the subject area on which the center focuses—the extent of the applicant's overseas activities and cooperation with foreign educators, institutions, and governments.

(2) The Secretary looks for information that shows—

(i) The adequacy of the provisions for relevant overseas experience for faculty and students in the center's program; and

(ii) The extent to which provision is made for cooperation with foreign educators, institutions, and governments.

(k) *Need and potential impact.* (15)

(1) The Secretary reviews each application for information that shows the need for, and potential impact of, the applicant's proposed activities.

(2) The Secretary looks for information that shows—

(i) The extent to which the proposed activities serve national needs;

(ii) The extent to which an improved program in language and area studies or language and international studies will be available at the applicant institution at the termination of the grant period; and

(iii) The potential impact of the proposed project in improving the knowledge of languages, areas, or international studies at the national level.

(20 U.S.C. 1122)

(l) *Outreach activities.* (10).

(1) The Secretary reviews each application for information that shows the extent of the applicant's outreach activities.

(2) The Secretary looks for information that shows—

(i) The quality of the services the center provides to persons and organizations outside the center as these services relate to the provision of information and training primarily for national groups, but, also, for regional and local groups; and

(ii) The contribution of these outreach services to curriculum development, faculty development, pre-professional training, and public understanding.

(m) *Degree to which priorities are served.* (10)

If, under the provisions of § 656.34, the application notice lists specific priorities for centers, the Secretary looks for evidence of the degree to which those priorities are being served.

(20 U.S.C. 1122)

§ 656.32 [Reserved]

§ 656.33 What priorities may the Secretary establish for National Resource Centers?

(a) The Secretary may each year select for funding priority—(1) *Educational levels;* for example, centers whose instructional level is both undergraduate and graduate, centers providing only undergraduate instruction, or centers only providing only graduate instruction.

(2) *Types of centers;* for example, centers focusing on a single area; on international studies; or on particular issues or topics, such as business or energy; or on a combination of these; and

(3) *Specific countries or geographic regions or areas of the world;* for example, Canada or Mexico, East Asia, Africa, or the Middle East.

(b) The Secretary announces any priorities in the application notice published in the FEDERAL REGISTER.

(20 U.S.C. 1122(a))

Subpart E—What Conditions Must Be Met by a Grantee?

§ 656.40 What are the limitations on allowable costs?

Equipment costs exceeding five percent of the grant are not allowable.

(20 U.S.C. 1122)

PART 657—FOREIGN LANGUAGE AND AREA STUDIES FELLOWSHIPS PROGRAM

Subpart A—General

Sec.

657.1 What is the Foreign Language and Area Studies Fellowships Program?
657.2 Who is eligible to apply for a quota of fellowships?
657.3 Who is eligible to receive a fellowship?
657.4 What regulations apply to the Foreign Language and Area Studies Fellowships Program?
657.5 What definitions apply to the Foreign Language and Area Studies Fellowships Program?

Subpart B—What Kinds of Projects Does the Secretary Assist under this Program? [Reserved]

Subpart C—How Does An Institution and A Student Submit an Application?

657.20 How does an institution submit an application for a quota of fellowships and for a Center?

Sec.
657.21 How does a student apply for a fellowship?

Subpart D—How Does the Secretary select an Institution for an Allocation of Fellowships?

657.30 How does the Secretary evaluate an application under the Fellowships Program?
657.31 What criteria does the Secretary use in selecting institutions for an allocation of fellowships?

Subpart E—What Conditions Must be Met by a Grantee?

657.40 What is the duration of individual fellowships?
657.41 What is the amount of a fellowship?
657.42 What is the payment method for fellowships?
657.43 What are the limitations on the use of funds for overseas fellowships and undergraduate travel?
657.44 Under what circumstances must an institution terminate a fellowship?

AUTHORITY: Sec. 602, Higher Education Act of 1965 as amended (20 U.S.C. 1122), unless otherwise noted.

SOURCE: 47 FR 14120, Apr. 1, 1982, unless otherwise noted.

Subpart A—General

§ 657.1 What is the Foreign Language and Area Studies Fellowship Program?

Under the Foreign Language and Area Studies Fellowship Program, the Secretary awards fellowships (stipends) through institutions of higher education to students who are:

(a) Enrolled in an approved center or program; and

(b) Undergoing advanced training, which includes the conduct of research with regard to subparagraphs (b)(3)and (b)(4) of the section, in—

(1) Any modern foreign language;

(2) Disciplines needed to provide a full understanding of the area, regions or countries in which such a language is used;

(3) International studies; or

(4) International aspects of professional and other fields of study.

(20 U.S.C. 1122)

§ 657.2 Who is eligible to apply for a quota of Fellowships?

(a) The Secretary awards an allocation of fellowships to an institution of higher education that operates an approved center or program that—

(1) Teaches modern foreign languages;

(2) Provides instruction in the fields needed for a full understanding of the area, regions, or countries in which the modern foreign languages are commonly used; or

(3) Provides research and training in international studies or the international aspects of professional and other fields of study.

(b) The Secretary uses the criteria set out in § 657.31 to both evaluate applications for a quota of fellowships and to approve centers and programs for the purpose of receiving a quota of fellowships.

(c) An institution does not need to receive a grant under the National Resource Center Program, 34 CFR Part 656, or the Undergraduate International Studies and Foreign Language Program, 34 CFR Part 658, to receive a quota of fellowships under this Part.

(20 U.S.C. 1122)

§ 657.3 Who is eligible to receive a Fellowship?

(a) A student is eligible to receive a fellowship if the student—

(1)(i) Is a citizen or national of the United States;

(ii) Is a permanent resident of the United States;

(iii) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than temporary purposes with the intention of becoming a citizen or permanent resident; or

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands.

(2) Is accepted for enrollment or is enrolled in an institution receiving an allocation of fellowships;

(3) Is accepted for—

(i) Advanced training in a foreign language and area or international studies; or

(ii) Research and training in the international aspects of professional and other fields of study; and

(4) Shows potential for high academic achievement, based on such indices as grade point average, class ranking, or similar measures that the institution may determine.

(b) A student is eligible to receive a fellowship for use outside the United States if the student—

(1) Meets the requirements under paragraph (a) of this section; and

(2) Is enrolled in an advanced overseas language program established by a United States institution; or

(3) Is engaged in study or research that cannot be done in the United States and is affiliated with an overseas institution of higher education or an appropriate organization in the host country.

(c) To award a fellowship for use overseas, an institution must obtain the advance approval of the Secretary.

(20 U.S.C. 1122)

§ 657.4 What regulations apply to the Foreign Language and Area Studies Fellowship Program?

The following regulations apply to this program:

(a) 34 CFR Part 655;

(b) The regulations in this Part 657; and

(c) The Education Department General Administrative Regulations EDGAR in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (Definitions).

(20 U.S.C. 1122)

§ 657.5 What definitions apply to the Foreign Language and Area Studies Fellowship Program?

The following definitions apply to the Fellowship Program:

(a) The definitions in 34 CFR 655.4.

(b) "Center" means a center as defined in 34 CFR 656.4.

(c) "Fellow" means a person who receives a stipend under Title VI of the Higher Education Act (HEA).

(d) "Fellowship" means the stipend paid a fellow under Title VI of the HEA.

(e) "Program" means (1) a program of study offering advanced training and research opportunities in modern foreign languages and disciplines needed to provide a full understanding of the area, regions or countries in which such languages are used, or, (2) a program offering foreign languages and international studies or the international aspects of professional and other fields of study.

(20 U.S.C. 1121-1127)

Subpart C—How Does an Institution and a Student Submit an Application?

§ 657.20 How does an Institution submit an application?

An institution that applies a quota of Fellowships under this Part and a grant to operate a center under 34 CFR Part 656 may submit one application for both activities.

(20 U.S.C. 1122)

§ 657.21 How does a student apply for a Fellowship?

(a) An applicant for a fellowship submits an application to an institution that has received a quota of fellowships.

(b) The applicant shall provide sufficient information to enable the institution to determine—

(1) Whether he or she is eligible to receive a fellowship; and

(2) Whether he or she should be selected for a fellowship on the basis of the selection criteria set forth in § 657.3.

(20 U.S.C. 1122)

Subpart D—How Does the Secretary Select an Institution for an Allocation of Fellowships?

§ 657.30 How does the Secretary evaluate an application under the Fellowship Program?

(a) The Secretary evaluates an application for an allocation of fellowships based upon the quality of the applicant's center or program. The applicant's center or program is evaluated and approved under the criteria set forth in § 657.31.

(b) In general, the Secretary awards up to 160 possible points for these criteria. However, if priority criteria are used, the Secretary awards up to 170 possible points. The maximum possible points for each criterion are shown in parentheses.

(20 U.S.C. 1122)

§ 657.31 What criteria does the Secretary use in selecting institutions for an allocation of Fellowships?

The Secretary selects applicants for a quota of fellowships on the basis of the quality of the applicant's center or program. The Secretary uses the following criteria in evaluating the applicant's center or program.

(a) *Plan of operation.* (15) (See 34 CFR 655.31(a))

(b) *Quality of key personnel.* (25) (See 34 CFR 655.31(b))

(c) *Budget and cost effectiveness.* (10) (See 34 CFR 655.31(c))

(d) *Evaluation plan.* (5) (See 34 CFR 655.31(d))

(e) *Adequacy of resources.* (10) (See 34 CFR 655.31(e))

(f) *Commitment to the subject area on which the center or program focuses.* (10)

(1) The Secretary reviews each application for information that shows the applicant's commitment to the subject area on which the center or program focuses.

(2) The Secretary reviews each application for information that shows—

(i) The degree of institutional commitment to the subject area of the center or program for which funding is sought as shown by the institution's previous record of accomplishment and support for that subject area; and

(ii) The extent to which the institution provides financial and other support to the center or program, to tenured faculty members of the center or program, and to qualified students in fields related to the center or program.

(g) *Strength of library.* (15)

(1) The strength of the institution's library in the subject area of the center or program, and the extent to which the institution provides financial support for the acquisition of library materials in that subject area.

(2) The Secretary reviews each application for information that shows whether the library is intended to support a graduate and/or undergraduate center or program.

(h) *Quality of the center or program's instructional program.* (25)

(1) The Secretary reviews each application for information that shows the quality of the applicant's program of instruction in the subject area on which the center or program focuses.

(2) The Secretary reviews each application for information that shows—

(i) The quality and extent of the course offerings;

(ii) The quality of the language training program; and

(iii) The extent to which a sufficient number of scholars or teaching faculty are employed to enable the center or program to carry out its purposes.

(i) *Quality of the center or program's relationships within the institution.* (10)

(1) The Secretary reviews each application for information that shows the quality of the center or program's relationships within the institution.

(2) The Secretary reviews each application for information that shows—

(i) The extent to which multi- and interdisciplinary instruction is included; and

(ii) The extent to which cooperative arrangements with other departments, schools, and professional programs of the institution exist.

(j) *Overseas activities.* (10)

(1) The Secretary reviews each application for information that shows—with regard to the subject area on which the center or program focuses—the extent of the applicant's overseas activities and cooperation with foreign educators, institutions, and governments.

(2) The Secretary looks for information that shows—

(i) The adequacy of the provisions for relevant overseas experience for faculty and students; and

(ii) The extent to which provision is made for cooperation with foreign educators, institutions, and governments.

(k) *Need and potential impact.* (15)

(1) The Secretary reviews each application for information that shows

the need for, and potential impact of, the center or program's proposed activities.

(2) The Secretary looks for information that shows—

(i) The extent to which the center or program supports activities that are needed nationwide;

(ii) The extent to which an improved program in language and area studies or language and international studies will be available at the applicant institution at the termination of the grant period; and

(iii) The potential impact of the center and program in improving the knowlege of languages, areas, or international studies at the national level.

(l) *Relevance to employment possibilities.* (5)

(1) The Secretary reviews each application for an allocation of fellowships for information that shows that the fields of study in which fellowships are to be awarded are relevant to employment possibilities.

(2) The Secretary looks for information that shows the relationship between the applicant's proposed program of instruction and the institution's recent record of placement of students.

(m) *Degree and linguistic proficiency requirements.* (5) The Secretary reviews each application for the adequacy of the degree requirements, including the requirements for language proficiency, for students enrolled in the program.

(20 U.S.C. 1122(b))

(n) *Priorities.* (10) The Secretary may establish priorities each year for the allocation of fellowships. These priorities relate to: certain world areas, countries, languages; levels of language offerings, academic disciplines; topics; or combination of any of these categories. For example, a priority may be for a specific language such as Chinese, a world area or country such as East Asia or Mexico, an academic discipline such as linguistics or sociology, a topic such as population growth and planning, or international trade and business.

(20 U.S.C. 1122)

Subpart E—What Conditions Must Be Met by Grantee?

§ 657.40 What is the duration of allocation of Fellowships and individual Fellowships?

(a) An institution may award a fellowship to an individual for—

(1) One academic year;

(2) One academic year and one summer session;

(3) One summer session subject to paragraph (b) of this section; or

(4) As many academic terms or summer sessions as it takes to complete his or her academic study within the time period covered by the allocation.

(b) A student may receive a fellowship for a summer session only if the fellow is enrolled in a summer program that offers the equivalent of one academic year of modern foreign language study (normally 10-12 semester hours).

(20 U.S.C. 1122(b))

§ 657.41 What is the amount of a Fellowship?

(a) An institution may award a fellowship in an amount that covers the cost of tuition and fees and an allowance for subsistence.

(b) The Secretary announces the expected amounts of subsistence allowances and any other fellowship costs in the annual application notice published in the FEDERAL REGISTER.

(20 U.S.C. 1122(b))

§ 657.42 What is the payment method for Fellowships?

(a) An institution of higher education participating in the fellowship program pays fellows in installments during the term of the fellowship.

(b) An institution shall make a payment only to a fellow who is enrolled and in good standing.

(c)(1) A fellow shall notify the institution that made the award of any overpayment or underpayment of award benefits.

(2) The institution shall make appropriate adjustments.

(20 U.S.C. 1122(b))

§ 657.43 What are the limitations on use of funds for overseas Fellowships and undergraduate travel?

(a) An institution must obtain the advance approval of the Secretary to award a fellowship for use overseas.

(b) An institution may not pay for undergraduate travel—

(1) Without the advance approval of the Secretary; and

(2) Unless the Secretary determines that these funds will be expended as part of a formal program of supervised study organized or approved by and recognized for credit by an eligible institution.

(20 U.S.C. 1122(c))

§ 657.44 Under what circumstances must an institution terminate a Fellowship?

An institution shall terminate a fellowship to an individual if the individual is no longer enrolled and in good standing at the institution.

(20 U.S.C. 1122(b))

PART 658—UNDERGRADUATE INTERNATIONAL STUDIES AND FOREIGN LANGUAGE PROGRAM

Subpart A—General

Sec.

658.1 What is the Undergraduate International Studies and Foreign Language Program?
658.2 Who is eligible to apply for assistance under this program?
658.3 What regulations apply to the Undergraduate International Studies and Foreign Language Program?
658.4 What definitions apply to the Undergraduate International Studies and Foreign Language Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

658.10 For what kinds of projects does the Secretary assist institutions of higher education?
658.11 What projects and activities may a grantee conduct under this program?
658.12 For what kinds of projects does the Secretary assist associations and organizations?

Sec.

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

658.30 How does the Secretary evaluate an application?
658.31 What selection criteria does the Secretary use?
658.32 What additional criteria does the Secretary apply to institutional applications?
658.33 What additional criterion does the Secretary apply to applications from organizations and associations?
658.34 What additional factors does the Secretary consider in selecting grant recipients?

Subpart E—What Conditions Must Be Met by a Grantee?

658.40 What are the limitations on allowable costs?

Authority: Sec. 604, Higher Education Act of 1965 as amended (20 U.S.C. 1124), unless otherwise noted.

Source: 47 FR 14122, Apr. 1, 1982, unless otherwise noted.

Subpart A—General

§ 658.1 What is the Undergraduate International Studies and Foreign Language Program?

The Undergraduate International Studies and Foreign Language Program is designed to provide Federal financial assistance to institutions of higher education or combinations of such institutions to strengthen and improve undergraduate instruction in international studies and foreign languages in the United States.

(20 U.S.C. 1124)

§ 658.2 Who is eligible to apply for assistance under this program?

The following are eligible to apply for assistance under this part:

(a) Institutions of higher education.

(b) Combinations of institutions of higher education.

(c) Public and private nonprofit agencies and organizations, including professional and scholarly associations.

(20 U.S.C. 1124)

§ 658.3 What regulations apply to the Undergraduate International Studies and Foreign Language Program

The following regulations apply to this program:

(a) 34 CFR Part 655.

(b) The regulations in this Part 658.

(c) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (Definitions).

(20 U.S.C. 1121-1127)

§ 658.4 What definitions apply to the Undergraduate International Studies and Foreign Language Program?

The definitions in 34 CFR 655.4 apply to this program.

(20 U.S.C. 1121-1127)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 658.10 For what kinds of projects does the Secretary assist institutions of higher education?

(a) The Secretary may provide assistance to an institution of higher education or a combination of institutions to plan, develop, and carry out a comprehensive program to strengthen and improve undergraduate instruction in international studies and foreign languages.

(b) The Secretary gives consideration to an applicant that proposes a comprehensive program that—

(1) Initiates new or revised courses in international studies;

(2) Makes instruction in foreign languages available to students in the program; and

(3) Takes place primarily in the United States.

(c) The comprehensive program shall focus on—

(1) International or global studies;

(2) A single world area and its languages; or

(3) Issues or topics, such as environmental studies or international business.

(20 U.S.C. 1124(a))

§ 658.11 What projects and activities may a grantee conduct under this program?

The Secretary awards grants under this part to assist in carrying out projects and activities that are an integral part of a comprehensive program to improve undergraduate instruction in international studies and foreign languages. These include projects such as:

(a) Planning for the development and expansion of the undergraudate curriculum in international studies and foreign languages;

(b) Teaching, research, curriculum development, and related activities such as—

(i) Conducting faculty workshops, conferences, and special lectures;

(ii) Developing and testing new curricular materials, including self-instructional materials in foreign languages, or specialized language materials dealing with a particular subject matter (such as business or law);

(iii) Initiating new and revised courses in international studies and foreign languages;

(iv) Developing ways to use the media, or developing projects to improve the effectiveness of sharing resources and materials;

(v) Developing standards to identify successful strategies for incorporating international aspects into the curriculum;

(c) Training faculty members in foreign countries or bringing foreign scholars to U.S. institutions;

(d) Placing U.S. faculty members in internships with international associations or with governmental and nongovernmental organizations in the U.S. or abroad t improve their understanding of international affairs;

(e) Initiating special bi-national or bilateral programs;

(f) Integrating undergraduate education with terminal master's degree programs;

(g) Developing an international dimension in teacher training; and

(h) Combining the teaching of international studies with professional or pre-professional training.

(20 U.S.C. 1124)

§ 658.12 For what kinds of projects does the Secretary assist associations and organizations?

The Secretary may award grants under this part to public and private nonprofit agencies and organizations including scholarly associations, that propose projects that will make an especially significant contribution to strengthening and improving undergraduate instruction in international studies and foreign languages at institutions of higher education.

(20 U.S.C. 1124(b))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 658.30 How does the Secretary evaluate an application?

(a)(1) The Secretary evaluates an application from an institution of higher education or a combination of such institutions on the basis of the criteria in §§ 658.31 and 658.32. The Secretary awards up to 85 possible points for these criteria.

(2) Under §§ 658.31 and 658.32 the Secretary evaluates applications for funding on a percentage score based upon the number of points an application receives and the maximum number of points possible.

(b)(1) The Secretary evaluates an application from an agency or organization or professional or scholarly association on the basis of the criteria in §§ 658.31 and 658.33. The Secretary awards up to 75 possible points for these criteria.

(2) Under §§ 658.31 and 658.33 the Secretary evaluates applications for funding on a percentage score based upon the number of points an application receives and the maximum number of points possible.

(c) The maximum possible points for each criterion are indicated in parentheses.

(20 U.S.C. 1124)

§ 658.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating an application for a project under this part.

(a) *Plan of operation.* (10) (See 34 CFR 655. 31(a))

(b) *Quality of key personnel.* (10) (See 34 CFR 655.31(b))

(c) *Budget and cost effectiveness.* (10) (See 34 CFR 655.31(c))

(d) *Evaluation plan.* (5) (See 34 CFR 655.31(d))

(e) *Adequacy of resources.* (10) (See 34 CFR 655.31(e))

(20 U.S.C. 1124)

§ 658.32 What additional criteria does the Secretary apply to institutional applications?

In addition to the criteria referred to in § 658.31, the Secretary applies the following criteria to applications submitted by an institution of higher education or a combination of such institutions:

(a) *Commitment to international studies.* (15)

(1) The Secretary reviews each application for information that shows the applicant's commitment to the international studies program.

(2) The Secretary looks for information that shows—

(i) The institution's current strength as measured by the number of international studies courses offered;

(ii) The extent to which planning for the implementation of the proposed program has involved the applicant's faculty, as well as administrators;

(iii) The institutional commitment to the establishment, operation, and continuation of the program as demonstrated by optimal use of available personnel and other resources; and

(iv) The institutional commitment to the program as demonstrated by the use of institutional funds in support of the program's objectives.

(b) *Elements of the proposed international studies program.* (15)

(1) The Secretary reviews each application for information that shows the nature of the applicant's proposed international studies program.

(2) The Secretary looks for information that shows—

(i) The extent to which the proposed activities will contribute to the implementation of a comprehensive program in international studies and foreign languages at the applicant institution;

(ii) The interdisciplinary aspects of the program;

(iii) The number of new and revised courses with an international perspective that will be added to the institution's programs; and

(iv) The applicant's plans to improve or expand language instruction.

(c) *Need for and prospective results of the proposed program.* (10)

(1) The Secretary reviews each application for information that shows the need for and the prospective results of the applicant's proposed program.

(2) The Secretary looks for information that shows—

(i) The extent to which the proposed activities are needed at the applicant institution;

(ii) The extent to which the proposed use of Federal funds will result in the implementation of a comprehensive program in international studies and foreign languages at the applicant institution;

(iii) The likelihood that the activities initiated with Federal funds will be continued after Federal assistance is terminated; and

(iv) The adequacy of the provisions for sharing the materials and results of the program with other institutions of higher education.

(20 U.S.C. 1124)

§ 658.33 What additional criterion does the Secretary apply to applications from organizations and associations?

In addition to the criteria referred to in § 658.31, the Secretary applies the following criterion to applications from organizations and associations:

(a) *Need for and potential impact of the proposed project in improving international studies and the study of modern foreign language at the undergraduate level.* (30)

(b) The Secretary reviews each application for information that shows the need for and the potential impact of the applicant's proposed projects in improving international studies and the study of modern foreign language at the undergraduate level.

(1) The Secretary looks for information that shows—

(i) The extent to which the applicant's proposed apportionment of Federal funds among the various budget categories for the proposed project will contribute to achieving results;

(ii) The international nature and contemporary relevance of the proposed project;

(iii) The extent to which the proposed project will make an especially significant contribution to the improvement of the teaching of international studies or modern foreign languages at the undergraduate level; and

(iv) The adequacy of the applicant's provisions for sharing the materials and results of the proposed project with the higher education community.

(20 U.S.C. 1124(b))

§ 658.34 What additional factors does the Secretary consider in selecting grant recipients?

In addition to applying the selection criteria in, as appropriate, §§ 658.31, 658.32, and 658.33, the Secretary, to the extent practicable and consistent with the criterion of excellence, seeks to—

(a) Achieve an equitable geographic distribution of awards throughout the U.S.; and

(b) Encourage diversity by ensuring that a variety of types of projects and institutions receive funding.

(20 U.S.C. 1124 and 1126); H. Rept. 96-1337 96 Cong. 2d. Sess. p. 189))

Subpart E—What Conditions Must Be Met by a Grantee?

§ 658.40 What are the limitations on allowable costs?

Equipment costs may not exceed five percent of the grant amount.

(20 U.S.C. 1124)

PART 660—THE INTERNATIONAL RESEARCH AND STUDIES PROGRAM

Subpart A—General

Sec.

660.1 What is the International Research and Studies Program?
660.2 Who is eligible to apply for grants under this program?
660.3 What regulations apply to the International Research and Studies Program?
660.4 What definitions apply to the International Research and Studies Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

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Subpart D—How Does the Secretary Make a Grant?

660.30 How does the Secretary evaluate an application?
660.31 What selection criteria does the Secretary use for all applications for a grant?
660.32 What additional selection criteria does the Secretary use for an application for a research project, a survey, or a study?
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660.34 What priorities may the Secretary establish?
660.35 What additional factors does the Secretary consider in selecting grant recipients?

Subpart E—What Conditions Must Be Met by a Grantee?

660.40 What are the limitations on allowable costs?

AUTHORITY: Section 605 of the Higher Education Act of 1965, as amended (20 U.S.C. 1125), unless otherwise noted.

SOURCE: 47 FR 14124, Apr. 1, 1982, unless otherwise noted.

Subpart A—General

§ 660.1 What is the International Research and Studies Program?

The Secretary may, directly or through grants or contracts, conduct research and studies which contribute to the purposes of the International Education Program authorized by Part A of Title VI of the Higher Education Act of 1965. The research and studies may include, but are not limited to—

(a) Studies and surveys to determine the need for increased or improved instruction in modern foreign languages and in other fields needed to provide a full understanding of the places in which such languages are commonly used;

(b) Research on more effective methods of providing instruction and evaluating competency in such foreign languages and other fields; and

(c) Development of specialized materials for use in providing such instruction and evaluation or for use in training individuals to provide such instruction and evaluation.

(20 U.S.C. 1125)

§ 660.2 Who is eligible to apply for grants under this program?

Public and private agencies, organizations, and institutions, and individuals are eligible to apply for grants under this part.

(20 U.S.C. 1125)

§ 660.3 What regulations apply to the International Research and Studies Program?

The following regulations apply to this program:

(a) 34 CFR Part 655;

(b) The regulations in this Part 660; and

(c) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (Definitions).

(20 U.S.C. 1121-1127)

§ 660.4 What definitions apply to the International Research and Studies Program?

The definitions in 34 CFR 655.4 apply to this program.

(U.S.C. 1121-1127)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 660.10 What activities does the Secretary assist?

An applicant may apply for funds to carry out any of the following types of activities:

(a) Studies and surveys to determine the need for increased or improved instruction in—

(1) Modern foreign languages; and

(2) Area studies and related fields needed to provide full understanding of the places in which those languages are commonly used.

(b) Research and studies—

(1) On more effective methods of instruction in modern foreign languages, area studies, or related fields; or

(2) To evaluate competency in those foreign languages, area studies, or related fields.

(c) The development of specialized materials—

(1) For use by students and teachers of modern foreign languages, area studies, and related fields; and

(2) For use in—

(i) Providing such instruction and evaluation; or

(ii) Training individuals to provide such instruction and evaluation.

(d) Research, surveys, studies, or the development of instructional materials that serve to enhance international understanding.

(e) Other research or material development projects that further the purposes of the International Education Program authorized by Part A of Title VI of the (HEA).

(20 U.S.C. 1125)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 660.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a research project, a study, or a survey on the basis of the criteria in §§ 660.31 and 660.32.

(b) The Secretary evaluates an application for the development of specialized instructional materials on the basis of the criteria in §§ 660.31 and 660.33

(c) The Secretary awards up to 100 possible points for these criteria. The maximum possible points for each criterion are shown in parentheses.

(20 U.S.C. 1125)

§ 660.31 What selection criteria does the Secretary use for all applications for a grant?

The Secretary uses the following criteria in evaluating applications for research or studies projects:

(a) *Plan of operation.* (10) (See 34 CFR 655.31(a))

(b) *Quality of key personnel.* (10) (See 34 CFR 655.31(b))

(c) *Budget and cost effectiveness.* (10) (See 34 CFR 655.31(c))

(d) *Evaluation plan.* (5) (See 34 CFR 655.31(d))

(e) *Adequacy of resources.* (5) (See 34 CFR 655.31(e))

(20 U.S.C. 1125)

§ 660.32 What additional selection criteria does the Secretary use for an application for a research project, a survey, or a study?

In addition to the criteria referred to in § 660.31, the Secretary applies the following criteria to an application for a research project, study, or survey:

(a) *Need for the project.* (10) The Secretary reviews each application for information that shows—

(1) A need for the proposed project in the field of study on which the project focuses; and

(2) That the proposed project will provide information about the present and future needs of the United States for study in foreign language and other related fields.

(b) *Usefulness of expected results.* (10) The Secretary reviews each application for information that shows the extent to which the results of the proposed project are likely to be used by other research projects or programs with similar objectives.

(c) *Development of new knowledge.* (10) The Secretary reviews each application for information that shows that the extent to which the proposed project is likely to develop new knowledge that will contribute to the purposes of the International Education Program authorized by Part A of Title VI of the HEA.

(d) *Formulation of problems and knowledge of related research.* (10) The Secretary reviews each application for information that shows that problems, questions, or hypotheses to be dealt with by the applicant—

(1) Are well formulated; and

(2) Reflect adequate knowledge of related research.

(e) *Specificity of statement of procedures.* (10) The Secretary reviews each application for the specificity and completeness of the statement of procedures to be followed, including a discussion of such components as sampling techniques, controls, data to be gathered, and statistical and other analyses to be undertaken.

(f) *Adequacy of methodology and scope of project.* (10) The Secretary reviews each application for information that shows—

(1) The adequacy of the proposed teaching, testing, and research methodology; and

(2) The size, scope, and duration of the proposed project.

(20 U.S.C. 1125)

§ 660.33 What additional selection criteria does the Secretary use for an application to develop specialized instructional materials?

In addition to the criteria referred to in § 660.31, the Secretary applies the following criteria to an application for assistance to develop specialized instructional materials.

(a) *Need for the project.* (10) The Secretary reviews each application for information that shows that—

(1) The proposed materials are needed in the educational field of study on which the project focuses; and

(2) The language or languages, the area, region, or country, or the issues or studies for which the materials are to be developed, are of sufficient priority and significance to the national interest to warrant financial support by the Federal Government.

(b) *Potential for the use of materials in other programs.* (10) The Secretary reviews each application for information that shows the extent to which the proposed materials may be used elsewhere in the United States.

(c) *Account of related materials.* (10) The Secretary reviews each application for information that shows that—

(1) All existing related or similar materials have been accounted for and the critical commentary on their adequacy is appropriate and accurate; and

(2) The proposed materials will not duplicate any existing adequate materials.

(d) *Likelihood of achieving results.* (10) The Secretary reviews each application for information that shows that the outlined methods and procedures for preparing the materials are practicable and can be expected to produce the anticipated results.

(e) *Expected contribution to other programs.* (10) The Secretary reviews each application for information that shows the extent to which the proposed work may contribute significantly to strengthening, expanding, or improving programs of foreign language studies, area studies, or international studies in the United States.

(f) *Description of final form of materials.* (5) The Secretary reviews each application for information that shows a high degree of specificity in the description of the contents and final form of the proposed materials.

(g) *Provisions for pretesting and revision.* (5) The Secretary reviews each application for information that shows that adequate provision has been made for—

(1) Pretesting the proposed materials; and

(2) If necessary, revising the proposed materials before publication.

(20 U.S.C. 1125)

§ 660.34 What priorities may the Secretary establish?

(a) The Secretary may each year select for funding from among the following priorities:

(1) Categories of eligible projects described in § 660.10.

(2) Specific languages or regions for study or materials development; for

example, the Near or Middle East, South Asia, Southeast Asia, Eastern Europe, Inner Asia, the Far East, Africa or Latin America, or the languages of those regions.

(3) Topics of research and studies; for example, language acquisition processes, methodology of foreign language instruction, foreign language proficiency testing, or assessments of resources and needs.

(4) Levels of education; for example, elementary, secondary, postsecondary or university-level education, or teacher education.

(b) The Secretary announces any priorities in the application notice published in the FEDERAL REGISTER.

(20 U.S.C. 1126)

§ 660.35 What additional factors does the Secretary consider in selecting grant recipients?

To the extent practicable and consistent with the criterion of excellence, the Secretary shall award grants in such manner as will achieve an equitable distribution of funds throughout the Nation.

(20 U.S.C. 1126; House Rept. 1337, 96 Cong. 2d Sess. p. 189)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 660.40 What are the limitations on allowable costs?

Funds awarded under this part may not be used for the training of students and teachers.

(20 U.S.C. 1125)

PART 662—HIGHER EDUCATION PROGRAMS IN MODERN FOREIGN LANGUAGE TRAINING AND AREA STUDIES

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APPENDIX—GUIDELINES

AUTHORITY: Sec. 102(b)(6) of P.L. 87-256, as amended, 75 Stat. 527 (22 U.S.C. 2452(b)(6)), and Executive Order No. 11034, unless otherwise noted.

SOURCE: 41 FR 10201, Mar. 9, 1976, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—General Provisions

§ 662.1 Scope.

(a) The regulations in this part govern the provision of Federal financial assistance by the Secretary, under Section 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961, to promote modern foreign language training and area studies in United States schools, colleges, and universities by supporting programs of research, study, and training in foreign countries by teachers and prospective teachers in such schools, colleges, and universities for the purpose of improving their skills in languages and their knowledge of the culture of the people of those countries, and by financing visits by educational specialists from those countries to the United States for the purpose of participating in foreign language training and area studies in United States schools, colleges, and universities. Responsibility for the administration of this program has been delegated to the Department of Health, Education, and Welfare by Executive Order No. 11034.

(b) [Reserved]

(c) In the selection of American citizens for participation in programs under this part, preference shall be given to those who have served in the Armed Forces of the United States, and due consideration shall be given to applicants from all geographical areas of the United States.

(22 U.S.C. 2452(b)(6), 2456(a)(2), Executive Order No. 11034, 20 U.S.C. 1232c)

[41 FR 10201, Mar. 9, 1976, as amended at 45 FR 22535, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 662.2 Definitions.

As used in this part—

"Academic year" means a period of time, usually eight or nine months, consisting of two semesters, two trimesters, three quarters, or the equivalent.

"Binational commission" means an educational and cultural foundation established through an agreement between the United States and either a foreign government or an international organization to carry out functions in connection with programs covered by this part.

"Board of Foreign Scholarships" means the Presidentially appointed board of 12 members which is responsible for supervision of the programs covered by this part.

"Dependent" means any of the following individuals who accompany the program participant to his research or training site:

(a) Spouse of the program participant;

(b) Children unmarried and under 21 years of age; and

(c) Mother or father of either the program participant or his or her spouse if incapable of self-support.

"Foreign currencies" means currencies of foreign countries, which currencies are owned by the United States in amounts in excess of probable requirements of the United States as determined annually by the Department of the Treasury and are appropriated by the Congress for use in connection with programs covered by this part.

"Institution of higher education" means an educational institution in any State which (1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, (2) is legally authorized within such State to provide a program of education beyond secondary education, (3) provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree, and (4) is a public or other nonprofit institution.

(22 U.S.C. 2452(b)(6), 2456)

[41 FR 10201, Mar. 9, 1976, as amended at 45 FR 22535, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 662.3 Projects focusing on certain countries.

Assistance under this part is not available for projects focusing primarily on Western Europe (except as provided in § 662.41(b)) or for research in countries where the United States has no diplomatic representation.

(22 U.S.C. 2452(b)(6))

§ 662.4 Selection factors considered by Board of Foreign Scholarships.

With respect to the Doctoral Dissertation Research Abroad and Faculty Research Abroad programs, the Board of Foreign Scholarships will consider, in its selection procedures, the individual applicant's professional and personal references and employment experience.

(22 U.S.C. 2452(b)(6), 2456)

§ 662.5 Regulations that apply to this program.

(a) *Regulations.* The following regulations apply to the Higher Education Programs in Modern Foreign Language Training and Area Studies:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and Part 77 (Definitions).

(2) The regulations in this Part 662.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Department" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Department programs; and

(2) Applying for assistance under a Department program.

(20 U.S.C. 1221e-3(a)(1))

[45 FR 22535, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

Subpart B—Doctoral Dissertation Research Abroad

§ 662.11 Scope.

Graduate students at eligible institutions may receive fellowships for periods of 6 to 12 months for doctoral dissertation research abroad in the fields of modern foreign languages and area studies.

(22 U.S.C. 2452(b)(6))

§ 662.12 Applications.

(a) Each fiscal year eligible institutions may recommend graduate students for fellowships under this subpart and forward to the Secretary applications for those students. Each application must include information as to the student's personal and academic background and proposed research project. In addition to the application, each student shall arrange with appropriate persons to have three reference forms (Form ED 7628-3) and one language reference form (Form 7628-1) submitted through his or her eligible institution to the Secretary on his or her behalf.

(b) Eligible institutions are responsible for accepting, screening, and forwarding to the Secretary those applications which meet the institution's technical and academic criteria.

(c) An "eligible institution," for the purpose of this subpart, means an institution of higher education in any State which is accredited by a nationally recognized accrediting agency or association and which offers a doctoral program in the fields of foreign languages and area studies.

(d) Requests for information shall be sent to the Division of International Education, Department, Washington, D.C. 20202.

(22 U.S.C. 2452(b)(6))

[41 FR 10201, Mar. 9, 1976, as amended at 45 FR 22535, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 662.13 Eligible students.

To be eligible to receive a fellowship under this subpart, a student must:

(a) Be a citizen or national of the United States or be an alien in the United States having immigration status and personal plans indicating that he is in the United States for other than a temporary purpose;

(b) Plan a teaching career at the college level in the United States;

(c) Be enrolled at an eligible institution and, by the time the fellowship period begins, have been admitted to candidacy for a doctoral degree in modern foreign languages or area studies;

(d) Provide evidence of adequate language skills for effectively carrying out the proposed research;

(e) Present a project for which research can reasonably be expected to be completed within the time limits of the award and which is otherwise feasible;

(f) Submit his application to his eligible institution and, if he is proposing to conduct research in the U.S.S.R., Bulgaria, Czechoslovakia, German Democratic Republic, Hungary, Poland, Romania, or Yugoslavia, simultaneously submit an application to the International Research and Exchanges Board (IREX) (only citizens of the United States are eligible to conduct research in these countries under this program).

(g) Have no more than a total of 48 months' fellowship support (including the time period of the grant applied for under this subpart) under Title VI of the National Defense Education Act and section 102(b)(6) of the Mutual Educational and Cultural Exchange Act.

(22 U.S.C. 2452(b)(6))

§ 662.14 Selection criteria.

The Secretary uses the criteria in this section to evaluate the applications of graduate students for the purpose of recommending to the Board of Foreign Scholarships candidates for fellowships under this subpart. Preference will be given to American citizens who have served in the Armed Forces of the United States. The criteria are weighted and total 60 points.

(a) *Plan of action* (Maximum 20 points).

(1) The Secretary reviews each application for information that shows the quality of the plan of action for the project.

(2) The Secretary looks for information that shows—

(i) The project is original, the problems, questions, and hypotheses are well formulated and the formulation reflects adequate knowledge of related research;

(ii) Guidance and supervision on the part of the dissertation advisor or committee throughout all stages, including the development of the project, understanding of research conditions abroad, and actual research in the field;

(iii) The project's location in a foreign country is necessary for the successful completion of the project and that the proposal demonstrates knowledge and utilization of resources pertinent to the project which are available in the United States;

(iv) The methodology is specifically described, sound, and appropriate to the project.

(b) *Qualifications of the applicant* (Maximum 15 points).

(1) The Secretary reviews each application for information that shows the qualifications of the applicant.

(2) The Secretary looks for information that shows—

(i) The applicant's academic record is excellent and relevant to the proposed project;

(ii) The applicant possesses adequate foreign language skills to effectively carry out the proposed project;

(iii) The applicant's ability to conduct research in a foreign cultural context, as evidenced by the applicant's references or previous overseas experience.

(c) *Budget and cost effectiveness* (Maximum 10 points).

(1) The Secretary reviews each application for information that shows the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget is adequate to support the project activities and the project can be completed within the proposed time limits;

(ii) The allowances are reasonable in relation to the objectives of the project.

(d) *Benefits to the host country* (Maximum 5 points).

(1) The Secretary reviews each application for information that shows benefits accruing to the host country as a result of the research.

(2) The Secretary looks for information that shows that the proposal reflects the intent to share periodically, during the fellowship period, the results of the research in progress with host country scholars and officials and reflects the intent to make a copy of the dissertation available for use by interested host country scholars and officials.

(e) *Adequacy of overseas resources* (Maximum 5 points).

(1) The Secretary reviews each application for information that shows

that there are adequate overseas resources available for the project.

(2) The Secretary looks for information that shows that the overseas facilities indicated will afford sufficient and appropriate locations for the proposed research and that the applicant has made preparations to establish research contacts and affiliations abroad.

(f) *Priorities* (Maximum 5 points).

(1) The Secretary reviews each application for information that shows that the project serves program priorities in the field of modern foreign languages and area studies. The Secretary will announce program priorities in each year's Notice of Closing Date.

(2) The Secretary looks for information that shows that the applicant addresses the program priorities for that year.

(22 U.S.C. 2452(b)(6); 2456(a)(2))

[45 FR 79032, Nov. 28, 1980]

§ 662.15 Selection procedures.

The Secretary will make the preliminary selection of doctoral fellows with the advice of (a) a panel of U.S. academic specialists in foreign languages and area studies and (b) binational commissions and U.S. diplomatic missions in the proposed countries of research. All selections by the Secretary are subject to review and final approval by the Board of Foreign Scholarships in accordance with "The Policy Statements of the Board of Foreign Scholarships," December, 1972.

(22 U.S.C. 2452(b)(6), 2456)

§ 662.16 Award provisions.

(a) Grants under this subpart will be made to an eligible institution which will be responsible for administering the grant, except insofar as the grant is made in foreign currencies, according to its own fiscal procedures and the terms specified in the official grant agreement.

(b) The grantee is responsible for disbursing the funds for allowances authorized by the grant with the exception of those allocated to insurance and those paid in foreign currencies.

(c) The grantee will receive an administrative allowance of $100 for each fellowship listed in the grant agreement.

(d) Each fellowship will provide the following benefits:

(1) A partial maintenance stipend based on the Standard Government Travel Regulations. Amounts equal to living allowances received by the fellow from other than personal sources which duplicate benefits under this award will be deducted from the total stipend, with the exception of veterans' benefits received under Title 38, United States Code;

(2) An allowance for accompanying dependents based on the cost of living in the approved country of research;

(3) Round-trip travel, for the fellow only, from the airport closest to his current or permanent address to his overseas destination and return to the point of origin;

(4) An excess baggage allowance, for the fellow only, not to exceed 50 pounds each way;

(5) Tuition at a foreign institution, when necessary to facilitate the satisfactory completion of the project;

(6) A project allowance of up to $500 for the purchase of expendable materials and supplies during the award period;

(7) A local travel allowance for necessary project-related transportation within the approved country(ies) of research, exclusive of the purchase of transportation equipment, and

(8) Health and accident insurance, for the fellow only, under the terms of a U.S. Government-contracted group insurance policy.

(e) The amount of benefits other than those provided for international travel and baggage will be based on the period beginning with the date on which the fellow initiates his approved research in the host country and terminating with the date on which the fellow completes his approved project. At the discretion of the grantee and upon receipt by the grantee of final travel approval from the Department, funds may be released to a fellow prior to his departure from the United States.

(f) In the event of early departure from the host country, premature termination of the grant, revocation of the award, or early completion of the approved project, benefits will be prorated according to the policy of the Department.

(22 U.S.C. 2452(b)(6), 2454(e)(1))

§ 662.17 Student responsibilities.

(a) To avoid forfeiting his award, a fellow must leave the United States for his approved destination on or after the date of the grant to his institution but no later than December 31 of the fiscal year after that in which the grant is made, unless an extension of this deadline is obtained from the Secretary.

(b) A fellow must submit to the Secretary, through his institution, two program reports:

(1) An interim report at the half-way point of his research containing information on such matters as project accomplishments to that date, research conditions, living conditions, assistance received from U.S. officials and binational commissions, visa requirements for research, general recommendations for improving program arrangements, and any additional information which might benefit future fellows;

(2) A final report on completion of the research updating the interim report described above and containing such additional information as the estimated total cost of the project, sources of funding, present occupation and long-range career plans, tentative title of dissertation, effectiveness of the fellowship in increasing the fellow's store of knowledge and improving his skills, present utilization of information or skills acquired, and the impact of the fellowship on the body of knowledge available in the fellow's particular field of study.

(22 U.S.C. 2452(b)(6))

Subpart C—Faculty Research Abroad

§ 662.21 Scope.

(a) Faculty members at eligible institutions may receive fellowships for periods of 3 to 12 months for research abroad in modern foreign languages and area studies.

(b) Awards will be granted only for research that could not be conducted in the United States or for which a foreign country or region provides significantly superior research facilities and materials.

(c) Awards under this subpart will not support dissertation research for the doctoral degree.

(22 U.S.C. 2452(b)(6))

§ 662.22 Applications.

(a) Each fiscal year eligible institutions may recommend to the Secretary faculty members for assistance under this subpart and forward to the Secretary applications from those faculty members. Each application must include information as to the faculty member's personal academic background and proposed research project.

(b) Eligible institutions are responsible for accepting, screening, and forwarding to the Secretary those applications which meet the institution's technical and academic criteria.

(c) An "eligible institution" for the purpose of this subpart means an institution of higher education in any State which is accredited by a nationally recognized accrediting agency or association.

(d) Requests for information shall be sent to the Division of International Education, Department, Washington, D.C. 20202.

(22 U.S.C. 2452(b)(6))

[41 FR 10201, Mar. 9, 1976, as amended at 45 FR 22535, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 662.23 Eligible faculty members.

To be eligible to receive a fellowship under this subpart, a faculty member must:

(a) Be a citizen or national of the United States with whom an eligible institution has or anticipates having a continuing long-term employment relationship (Faculty members in visiting status are not eligible.);

(b) Be an educator experienced in modern foreign languages or area studies (A faculty member must have been engaged in at least half-time teaching or research relevant to his foreign language or area specialization during the two years preceding the date of the award);

(c) Possess adequate skills in the language of the country or in a language germane to the region where the project would be undertaken;

(d) Present a project for which research can reasonably be expected to be completed within the time limits of the award and which is otherwise feasible;

(e) Present a statement from his employing institution describing how the project will contribute to the institution's plans for developing its programs in modern foreign languages or area studies;

(f) Submit his application to his eligible institution and, if he is proposing to conduct research in the U.S.S.R., Bulgaria, Czechoslovakia, German Democratic Republic, Hungary, Poland, Romania, or Yugoslavia, simultaneously submit an application to the International Research and Exchanges Board (IREX).

(22 U.S.C. 2452(b)(6))

§ 662.24 Selection criteria.

The Secretary uses the criteria in this section to evaluate the applications of faculty for the purpose of recommending to the Board of Foreign Scholarships candidates for fellowships under this subpart. Preference will be given to American citizens who have served in the Armed Forces of the United States. The criteria are weighted and total 60 points.

(a) *Plan of action* (Maximum 20 points).

(1) The Secretary reviews each application for information that shows the quality of the plan of action for the project.

(2) The Secretary looks for information that shows—

(i) The problems, questions, and hypotheses are well formulated and the formulation of the project reflects adequate knowledge of related research;

(ii) The objectives of the project are capable of being obtained and relevant to the sponsoring institution's plans for developing and/or strengthening programs in modern foreign languages and area studies.

(iii) The project's location in a foreign country is necessary for the successful completion of the project and that the proposal demonstrates knowledge and utilization of resources pertinent to the project which are available in the United States;

(iv) The methodology is specifically described, sound, and appropriate to the project.

(b) *Qualifications of applicant* (Maximum 15 points).

(1) The Secretary reviews each application for information that shows the qualifications of the applicant.

(2) The Secretary looks for information that shows—

(i) The applicant's academic and professional record is excellent and relevent to the proposed project;

(ii) The applicant possesses adequate foreign language skills to effectively carry out the proposed project;

(iii) The applicant's ability to conduct research in a foreign cultural context, as evidenced by previous language and area studies training or previous overseas experience.

(c) *Budget and cost effectiveness* (Maximum 10 points).

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget is adequate to support the project activities and the project can be completed within the proposed time limits.

(ii) The allowances are reasonable in relation to the objectives of the project.

(d) *Benefits* (Maximum 5 points).

(1) The Secretary reviews each application for information that shows benefits accruing from the proposed research.

(2) The Secretary looks for information that shows that the proposal reflects the intent to consult and share results of the research with host country scholars and officials and the American scholarly community.

(e) *Adequacy of overseas resources* (Maximum 5 points).

(1) The Secretary reviews each application for information that shows that there are adequate overseas resources available for the project.

(2) The Secretary looks for information that shows that the overseas facil-

ities indicated will afford sufficient and appropriate locations for the proposed research and that the applicant has made preparations to establish research contacts and affiliations abroad.

(f) *Priorities* (Maximum 5 points).

(1) The Secretary reviews each application for information that shows that the project serves program priorities in the field of modern foreign languages and area studies. The Secretary will announce program priorities in each year's Notice of Closing Date.

(2) The Secretary looks for information that shows that the applicant addresses the program priorities for that year.

(22 U.S.C. 2452(b)(6); 2456(a)(2))

[45 FR 79033, Nov. 28, 1980]

§ 662.25 Selection procedures.

The Secretary will make the preliminary selection of faculty research fellows with the advice of (a) a panel of U.S. academic specialists in modern foreign languages and area studies and (b) binational commissions and U.S. diplomatic missions in the proposed countries of research. All selections by the Secretary are subject to review and final approval by the Board of Foreign Scholarships in accordance with "The Policy Statements of the Board of Foreign Scholarships," December, 1972.

(22 U.S.C. 2452(b)(6), 2456)

§ 662.26 Award provisions.

(a) A grant under this subpart will be made to an eligible institution which will be responsible for administering the grant, except insofar as the grant is made in foreign currencies, according to its own fiscal procedures to the extent consistent with the terms specified in the official grant agreement.

(b) The grantee is responsible for disbursing the funds for allowances authorized by the grant with the exception of those paid in foreign currencies. All grant payments by a grantee must be made on or after the effective date of the grant.

(c) Benefits available for faculty research awards will be determined and announced annually by the Secretary.

(d) The amount of benefits other than those provided for international travel and baggage will be based on the period beginning with the date on which the fellow initiates his approved research in the host country and terminating with the date on which the fellow completes his approved project. At the discretion of the grantee and upon receipt by the grantee of final travel approval from the Department, funds may be released to a fellow prior to his departure from the United States.

(e) In the event of early departure from the country of research, premature termination of the grant, revocation of the award, or early completion of the approved project, award benefits will be prorated according to the policy of the Department.

(22 U.S.C. 2452(b)(6), 2454(e)(1))

§ 662.27 Responsibilities of the fellow.

(a) To avoid forfeiting his award, a fellow must leave the United States for his approved destination on or after the date of the grant to his institution but no later than December 31 of the fiscal year after that in which the grant is made, unless an extension of this deadline is obtained from the Secretary.

(b) A fellow must submit to the Secretary a final report upon completion of the research containing information on such matters as project accomplishments, research conditions, living conditions, assistance received from U.S. officials and binational commissions, present occupation, impact of the fellowship on the body of knowledge available in the fellow's field of specialization, titles of any publications resulting from the fellowship, and other matters as to which additional information might be of benefit to future fellows.

(22 U.S.C. 2452(b)(6))

Subpart D—Group Projects Abroad

§ 662.31 Scope.

(a) An eligible institution may receive a grant to help improve its programs in modern foreign languages and area studies through overseas projects in research, training, or curriculum development.

(b) Projects involving construction of facilities or purchase of real property are not eligible for support.

(22 U.S.C. 2452(b)(6))

§ 662.32 Applications.

(a) Each fiscal year eligible institutions may forward proposals to the Secretary for assistance under this subpart.

(b) An "eligible institution" for the purpose of this subpart means—

(1) An institution of higher education which is accredited by a nationally recognized accrediting agency or association;

(2) A State educational agency;

(3) A private non-profit educational organization; or

(4) A consortium of institutions described in paragraphs (b) (1), (2), or (3) of this section.

(c) Requests for information shall be sent to the Division of International Education, Department, Washington, D.C. 20202.

(22 U.S.C. 2452(b)(6))

[41 FR 10201, Mar. 9, 1976, as amended at 45 FR 22535, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 662.33 Eligible participants.

To be eligible to participate in a Group Project Abroad, a person must:

(a) Be a citizen or national of the United States; and

(b) Be (1) a faculty member in modern foreign languages or areas studies; (2) an experienced educator responsible for planning, conducting, or supervising programs in modern foreign languages or area studies at the elementary, secondary, or community college level; or (3) a graduate student or a junior or senior at the undergraduate level who plans a teaching career in modern foreign languages or area studies.

(22 U.S.C. 2452(b)(6))

§ 662.34 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for the purpose of recommending to the Board of Foreign Scholarships projects for funding under this subpart. The criteria are weighted and total 100 points.

(a) *Plan of operation* (Maximum 25 points).

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel* (Maximum 20 points).

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project;

(iv) The extent to which the applicant, as part of its non-discriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training in fields related to the objectives of the project as well as other information that the applicant provides.

(c) *Budget and cost effectiveness* (Maximum 10 points).

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities;

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan* (Maximum 10 points).

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows that the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources* (Maximum 5 points).

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows that the facilities, equipment, and/or supplies that the applicant plans to use are adequate.

(f) *Specific program criteria* (Maximum 30 points).

(1) In addition to the criteria noted above, the Secretary reviews each application for information that shows that the project meets the specific program criteria.

(2) The Secretary looks for information that shows—

(i) The potential impact of the project on the development of modern foreign languages and area studies in American education. (Maximum 5 points).

(ii) The project's relevance to the applicant institution's educational goals and its relationship to the institution's program development in modern foreign languages and area studies. (Maximum 5 points).

(iii) The extent to which direct experience abroad is necessary to achieve the project's objectives and the effectiveness with which relevant host country resources will be utilized. (Maximum 5 points).

(iv) The project serves program priorities in the field of modern foreign languages and area studies. The Secretary will announce program priorities in each year's Notice of Closing Date. The Secretary looks for information that shows that the applicant addresses the program priorities for that year. (Maximum 15 points).

(22 U.S.C. 2452(b)(6); 2456(a)(2))

[45 FR 79033, Nov. 28, 1980]

§ 662.35 Selection procedures.

The Secretary will make the preliminary selection of Group Projects with the advice of (a) a panel of U.S. academic specialists in modern foreign languages and area studies and (b) binational commissions and U.S. diplomatic missions in the proposed countries of study. All selections by the Secretary are subject to review and final approval by the Board of Foreign Scholarships in accordance with "The Policy Statements of the Board of Foreign Scholarships," December, 1972.

(22 U.S.C. 2452(b)(6), 2456)

§ 662.36 Award provisions.

(a) Group Projects Abroad is a cost-sharing program. The grantee institution, individual project participants, or other sources must bear expenses not covered by the grant and all project-related expenses within the United States.

(b) Grant funds under this subpart may only be used for the following:

(1) A partial maintenance stipend based on the Standard Government Travel Regulations;

(2) Round-trip international travel;

(3) A local travel allowance for necessary project-related transportation within the country of study, exclusive of the purchase of transportation equipment;

(4) Purchase of project-related artifacts, books, and other teaching materials in the country of study;

(5) Rent for instructional facilities in the country of study;

(6) Clerical and professional services performed by resident instructional personnel in the country of study; and

(7) Other expenses in the country of study, if necessary for the project's success and approved in advance by the Secretary.

(22 U.S.C. 2452(b)(6), 2454(e)(1))

[41 FR 10201, Mar. 9, 1976, as amended at 45 FR 22535, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 662.37 Grantee responsibilities.

Upon completion of a project, the grantee must submit the following reports to the Secretary:

(1) A report listing the project participants, including name, title, home institution, and address; and

(22 U.S.C. 2452(b)(6))

[41 FR 10201, Mar. 9, 1976, as amended at 45 FR 22535, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

Subpart E—Foreign Curriculum Consultants

§ 662.41 Scope.

(a) Eligible institutions may receive grants to bring consultants from other countries to the United States for an academic year to assist in planning and developing curriculums in modern foreign languages and area studies.

(b) Consultants from Western European countries may be approved only if they are to develop curriculums in area studies with an emphasis on modern political, economic, or social developments. Grants will not be made to institutions seeking consultants from these countries primarily to develop language programs.

(22 U.S.C. 2452(b)(6))

§ 662.42 Applications.

(a) Each fiscal year eligible institutions may forward proposals to the Secretary for asistance under this subpart.

(b) An "eligible institution" for the purpose of this subpart means—

(1) An institution of higher education which is accredited by a nationally recognized accrediting agency or association;

(2) A State educational agency;

(3) A local educational agency;

(4) A private nonprofit educational organization; or

(5) A consortium of institutions described in paragraphs (b)(1), (2), (3), or (4) of this section.

(c) Requests for information shall be sent to the Division of International Education, Department, Washington, D.C. 20202.

(22 U.S.C. 2452(b)(6))

[41 FR 10201, Mar. 9, 1976, as amended at 45 FR 22535, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 662.43 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for the purpose of recommending to the Board of Foreign Scholarships projects for funding under this subpart. The criteria are weighted and total 100 points.

(a) *Plan of operation* (Maximum 25 points).

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel* (Maximum 20 points).

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project;

(iv) The extent to which the applicant, as part of its non-discriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness* (Maximum 10 points).

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities;

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan* (Maximum 5 points).

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows that the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources* (Maximum 5 points).

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows that the facilities, equipment, and/or supplies that the applicant plans to use are adequate.

(f) *Specific program criteria* (Maximum 35 points).

(1) In addition to the criteria noted above, the Secretary reviews each application for information that shows that the project meets the specific program criteria.

(2) The Secretary looks for information that shows—

(i) The potential impact of the project on the applicant institution's plans for developing its modern foreign language and area studies programs. (Maximum 5 points).

(ii) The potential effective use of the results of the consultant's work following the completion of the project. (Maximum 5 points).

(iii) The appropriateness of the consultant's duties and the allocation of time among the duties. (Maximum 5 points).

(iv) The number of faculty, students, and members of the relevant community who are expected to be affected by the consultant's activities. (Maximum 5 points).

(v) The likelihood that educational institutions other than the grantee will share the consultant's services and the extent to which such institutions have participated in helping define the nature of these services. (Maximum 5 points).

(vi) The adequacy of the arrangements made for coordinating the consultant's work under the supervision of a project director. (Maximum 5 points).

(vii) If the proposal is for curriculum development in area studies, a focus on area studies in which the applicant institution lacks adequate instructional materials and trained personnel. (Maximum 5 points).

(22 U.S.C. 2452(b)(6); 2456(a)(2))

[45 FR 79034, Nov. 28, 1980]

§ 662.44 Selection of consultants.

(a) The Secretary will make the preliminary selection from among the Foreign Curriculum Consultant proposals with the advice of a panel of academic specialists. All selections by the Secretary are subject to review and final approval by the Board of Foreign Scholarships in accordance with "The Policy Statements of the Board of Foreign Scholarships," December, 1972.

(b) The Secretary will forward the approved proposals through the Department of State to the appropriate binational commission or U.S. diplomatic mission abroad for recruitment of consultant candidates who meet the qualifications set forth in § 662.45 of this part.

(c) The Secretary will forward the names of approved consultant candidates to the applicant institution for its selection of a preferred individual.

(22 U.S.C. 2452(b)(6), 2456)

§ 662.45 Foreign Curriculum Consultant qualifications.

A foreign curriculum consultant must:

(a) Have at least five years of experience as an educator in modern foreign languages or area studies and appropriate related experience in curriculum planning and development, preparation of teaching materials, and training of teachers;

(b) Speak English fluently;

(c) Be willing to apply for and receive an exchange visitor visa; and

(d) Possess any special qualifications set forth in the applicant institution's proposal.

(22 U.S.C. 2452(b)(6))

§ 662.46 Award provisions.

(a) Grant funds under this part may be used only for the following:

(1) Round-trip international travel by economy air, for the consultant only, from the consultant's home country to the location of his assignment via Washington, D.C., to be arranged by the grantee institution;

(2) Unaccompanied baggage allowance for a total of 300 pounds per round-trip from the consultant's home country to the location of his assignment;

(3) Health and accident insurance, for the consultant only, under a U.S. Government contracted group insurance policy, to be arranged by the grantee institution;

(4) A $910 per month maintenance allowance; and

(5) An allowance for accompanying dependents provided at the rate of $150 per month for the first accompanying dependent and $50 per month for each additional accompanying dependent.

(b) The Foreign Curriculum Consultant Program is a cost-sharing program. The grantee institution will be responsible for providing for the consultant from other than grant funds:

(1) A $390 per month maintenance allowance;

(2) Travel costs within the United States incurred by the consultant in connection with his assignment; and

(3) Any other financial or other assistance which the consultant may need, due to unusual circumstances, in order to maintain a reasonable standard of living during his assignment.

(22 U.S.C. 2452(b)(6), 2454(e)(1))

[41 FR 10201, Mar. 9, 1976, as amended at 45 FR 22535, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

Subpart F—Special Provisions

§ 662.51 Financial reports and refunds.

(a)-(b) [Reserved]

(c) Foreign currency grant funds which are not expended as of the date of the final financial report shall be returned either in cash or by check to the appropriate United States embassy or consulate abroad. Evidence of refunds made to embassies or consulates must be included with the final financial report submitted to the Secretary.

(20 U.S.C. 1232c)

[41 FR 10201, Mar. 9, 1976, as amended at 45 FR 22535, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 662.52 Cost limitations.

(a) Maintenance allowances may not be provided in excess of the amount shown in the grant agreement budget or the maximum maintenance rates and allowances as determined by the Secretary, whichever is lower.

(b) Foreign currency funds budgeted for international travel and baggage may not be transferred to any other use.

(20 U.S.C. 1232c)

§ 662.53 Equipment.

Equipment may not be purchased with funds granted under this part unless authorized by the grant agreement or approved or directed by the Secretary in writing through an amendment to the grant agreement.

(20 U.S.C. 1232c, 22 U.S.C. 2452(b)(6))

§ 662.54 Conduct abroad of individual participants.

(a) All U.S. participants going abroad under a grant authorized under this part will be furnished a statement prepared by the Board of Foreign Scholarships which sets forth the rights and obligations of American grantees and participants. Such participants shall be expected to adhere to the standards set forth therein and to comply with the legal and moral standards of the host country. Failure to do so many result in the revocation or termination of benefits under the grant.

(b) Revocation or termination of a grant may be made for misconduct including, but not limited to, the following:

(1) Violation of the laws of the United States or the host country;

(2) Acts which give offense to the host country; or

(3) Work producing income unauthorized by the host country.

(c) Revocation or termination of grant benefits shall be accomplished through action of the Secretary with the concurrence of the Board of Foreign Scholarships.

(20 U.S.C. 1232c, 22 U.S.C. 2456)

§ 662.55 International travel.

(a) [Reserved]

(b) A traveler shall not depart for a foreign country without the appropriate visas for carrying out his proposed project.

(c) After travel has been approved by the Secretary, a grantee or its authorized representative will make all arrangements for travel including obtaining airline tickets.

(d) International travel costs may not exceed jet economy airfare via the most direct route for the approved itinerary. All travelers must use United States flag airlines if available.

(20 U.S.C. 1232c, 22 U.S.C. 2452(b)(6))

[41 FR 10201, Mar. 9, 1978, as amended at 45 FR 22535, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 662.56 Payment procedures for grants payable in foreign currencies.

For grants payable in foreign currencies, a grantee's designated representative will be authorized to receive funds from the United States embassy or consulate in the host country and will have the responsibility for accounting for and reporting the use of all funds to the embassy or consulate and the grantee. A designated representative shall receive foreign currency funds at the prevailing rate of exchange available to the embassy or consulate on the date of payment in the equivalent of the U.S. dollar amount specified in the grant agreement.

(20 U.S.C. 1232c)

APPENDIX

GUIDELINES

Mutual Educational and Cultural Exchange Act of 1961, Section 102(b)(6)

Higher Education Programs in Modern Foreign Language Training and Area Studies

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CHAPTER I—INTRODUCTION

PART 1—SCOPE OF GUIDELINES

§ 1.1 *Scope of guidelines.*

(a) The guidelines contained in this document are recommendations and suggestions for meeting the legal requirements which apply to assistance under the Mutual Educational and Cultural Exchange Act of 1961, section 102(b)(6). The legal requirements include the Act itself (22 U.S.C. 2451-58) and the regulations (34 CFR 662). The guidelines are not to be construed as requirements. However, where the guidelines set forth permissible means of meeting a legal requirement, the guidelines may be relied upon.

(22 U.S.C. 2451; 113 Cong. Rec. 5936, 5939 (daily ed. May 23, 1967); *United States* v. *Jefferson County Board of Education,* 372 F. 2d 836, 857 (5th Cir., 1966))

(b) Where a guideline is issued in connection with or affecting a provision of the regulations, the pertinent regulation will be cited after the citation of the legal authority for the guideline in the parentheses following the guideline. For example, if the legal authority for the guideline is section 102(b)(6) of the Act (22 U.S.C. 2452(b)(6)), and the guideline affects § 662.33 of the regulations (34 CFR 662.33), the following citation will be placed on the line immediately following the guideline: (22 U.S.C. 2452(b)(6); 34 CFR 662.33). If no particular section of the regulations is affected, no citation to the Code of Federal Regulations (CFR) will be made (20 U.S.C. 1232(a))

CHAPTER II—DOCTORAL DISSERTATION RESEARCH ABROAD AND FACULTY RESEARCH ABROAD

PART 2—INSTITUTIONAL PROGRAM ADMINISTRATION

§ 2.1 *Designation of institution representative.*

(a) The initial step for an eligible institution which intends to apply for Doctoral Dissertation Research Abroad or Faculty Research Abroad fellowships should be the designation by the institution of an official to serve as institution representative.

(b) The representative should be the dean of the graduate school or a faculty member who possesses a broad knowledge of the fields of modern foreign languages or area studies.

(22 U.S.C. 2452(b)(6); 34 CFR 662.12, 662.16, 662.22, 662.26)

§ 2.2 *Responsibilities of the institution representative.*

The institution representative should assume responsibility for:

(1) requesting individual application packets from the Division of International Education, Department, Washington, D.C. 20202.

(2) informing potentially eligible students and faculty members about the programs;

(3) distributing application packets to potentially eligible students and faculty members;

(4) setting a campus deadline for receipt of individual applications;

(5) screening the applications in accordance with program eligibility requirements as well as technical and academic standards set by the institution;

(6) signing all recommended applications on behalf of the institution;

(7) submitting recommended applications to the Department;

(8) administering the grant after the award is made.

(22 U.S.C. 2452(b)(6); 34 CFR 662.12, 662.16, 662.22, 662.26)

PART 3—APPLICATIONS

§ 3.1 *Application procedures.*

(a) Individual applications should be prepared according to materials available from the Division of International Education. No overall institutional proposal is required.

(b) If an institution forwards applications for more than one candidate, any preference as to priority should be indicated. Any ranking procedure should be summarized in a memorandum of transmittal accompanying the submission of the recommended applications.

(c) To facilitate negotiations between the institution and the Secretary, each individual application should contain the (22 U.S.C. 2452(b)(6); 34 CFR 662.12, 662.22) name, address, and telephone number of the institution representative and of the contracting official of the institution.

(22 U.S.C. 2452(b)(6); 34 CFR 662.12, 662.22)

PART 4—PROJECT REVIEW

§ 4.1 *Sensitive topics.*

Awards are not made for research topics which are determined to be politically sensitive in the host country. If an individual candidate anticipates any problem with the political acceptability of the proposed project or of the techniques required to carry it out, at least one alternative project outline should be submitted with the original application. If a candidate presents only one topic which is subsequently determined to be politically sensitive, time may not permit the development of an acceptable substitute.

(22 U.S.C. 2452(b)(6); 34 CFR 662.14, 662.15, 662.24, 662.25)

PART 5—PERSONAL REFERENCES

§ 5.1 *Faculty Research Abroad applicants.*

Each individual faculty applicant should obtain from his dean or other qualified university official a personal reference and project endorsement to provide judgements on the following:

(a) applicant's professional competence;

(b) applicant's emotional stability, personality, and maturity;

(c) relevance of the applicant's project to the institution's plans for developing its modern foreign language and area studies program;

(d) method by which the institution will utilize applicant's experience after his return, and;

(e) feasibility of applicant's project based on his capabilities and availability for an award.

(22 U.S.C. 2452(b)(6); 34 CFR 662.24)

PART 6—INSURANCE

§ 6.1 *Faculty Research Abroad fellows.*

Each institution should ensure that its Faculty Research Abroad fellows will be covered by health and accident insurance while taking part in their projects. They may enroll under the U.S. Government-contracted group insurance policy.

(22 U.S.C. 2452(b)(6); 34 CFR 662.26)

CHAPTER III—GROUP PROJECTS ABROAD

PART 7—TYPES OF ELIGIBLE PROJECTS

§ 7.1 *Summer seminars.*

(a) Summer seminars for faculty and/or students may be designed to help integrate international studies into an institution's general curriculum. Seminars may focus on a comprehensive study of a culture or particular aspects of the culture.

(b) Seminar plans may include travel within a country of study where needed to supplement formal instruction at the principal project site in such country.

(c) A U.S. institution may enter into arrangements with foreign institutions for the use of such institutions' instructional facilities and for other forms of assistance.

(d) Seminars of less than 6 weeks' duration will seldom be approved.

(22 U.S.C. 2452(b)(6); 34 CFR 662.31, 662.34)

§ 7.2 *Curriculum development teams.*

Teams composed of several faculty members (who may be accompanied by selected graduate students) may spend a period of time, normally 2 to 12 months, in a foreign country or region to acquire resource materials for curriculum development in the foreign language and area studies programs of their U.S. institution. Such materials may include artifacts, books, documents, educational films, museum reproductions, recordings, and other instructional materials. Proposals should indicate plans for the systematic utilization and dissemination of the materials in the United States.

(22 U.S.C. 2452(b)(6); 34 CFR 662.31, 662.34)

§ 7.3 *Group research or study.*

(a) Group research or study may be undertaken in a foreign country or region for a period, normally 2 to 12 months, by scholars and advanced graduate students selected by a U.S. institution. The U.S. institution should make arrangements for guidance, training, and maintenance abroad as well as for any clearances or affiliations necessary for conducting such research or study in the host country.

(b) Proposals to carry out research should provide evidence that participants possess the requisite language proficiency to conduct the research and that the disciplinary competence of the participants is correlated with their research topics.

(c) Participants in projects of a semester or more should have completed a minimum of one full semester of intensive language training and at least one course in area studies relevant to the project.

(22 U.S.C. 2452(b)(6); 34 CFR 662.31, 662.33, 662.36)

§ 7.4 *Summer intensive language programs.*

(a) Summer programs in non-Western languages may normally be assisted for a period of 8 to 12 weeks.

(b) Languages taught in such programs must be indigenous to the host country. While cultural orientation programs may be utilized as part of the language training, such activities should be clearly subordinated to intensive instruction in the language.

(c) Programs administered by university consortiums which serve students recruited on a nation-wide basis will receive preference.

(d) Students participating in such programs should be prepared to enter language courses at the advanced level.

(e) Maximum use should be made of the host country's instructional personnel. Participation of U.S. academic personnel should be limited essentially to administrative and professional planning functions such as those inherent in the role of a program director.

(22 U.S.C. 2452(b)(6); 34 CFR 662.31, 662.34)

§ 7.5 *Academic year intensive language programs.*

(a) Academic year intensive language programs may be assisted, normally for 9 to 12 months, in such critical non-Western languages as Chinese and Japanese.

(b) Programs administered by university consortiums which serve students recruited nation-wide will receive preference.

(c) At least 90 percent of the instructional time in such a program should be spent in language training.

(d) Program participants should have a minimum language proficiency equivalent to that normally achieved after 2 years' language study at the college level.

(22 U.S.C. 2452(b)(6); 34 CFR 662.31, 662.33, 662.34)

§ 7.6 *Summer seminars related to domestic ethnic heritage programs.*

(a) Summer seminars and workshops abroad related to domestic ethnic heritage programs which focus on the overseas origins of ethnic groups in the United States may be assisted, normally for periods of 8 to 12 weeks.

(b) Participants should be primarily elementary and secondary school teachers and curriculum supervisors engaged in conducting or planning ethnic studies programs.

(c) Participants from school systems containing a large concentration of students from the ethnic groups whose geographical origins are to be studied are encouraged to apply.

(d) Projects submitted by school systems should be planned cooperatively with U.S. colleges or universities having programs of established excellence in international and/or intercultural studies.

(22 U.S.C. 2452(b)(6); 34 CFR 662.31, 662.33, 662.34)

PART 8—APPLICATIONS—[RESERVED]

PART 9—INSURANCE

§ 9.1 *Health and accident insurance.*

Each institution should ensure that its Group Projects Abroad participants will be covered by health and accident insurance while they are taking part in their project. They may enroll under a U.S. Government-contracted group insurance policy.

(22 U.S.C. 2452(b)(6); 34 CFR 662.36)

CHAPTER IV—FOREIGN CURRICULUM CONSULTANTS

PART 10—TYPES OF ACTIVITIES

§ 10.1 *Duties of a consultant.*

(a) A Foreign Curriculum Consultant may provide an institution with a wide variety of services. These may include:

(1) review of textbooks and other educational materials;

(2) evaluation of library holdings and recommendations for new acquisitions;

(3) preparation of new instructional materials for use in the classroom;

(4) development of new units of study;

(5) conduct of demonstration classes and workshops for teachers;

(6) speaking at community functions; and

(7) teaching (normally not to exceed one regular classroom course per semester).

(b) The particular needs of each applicant determine the types of activities to be performed by the consultant. These needs should be stated explicitly and fully in the application.

(22 U.S.C. 2452(b)(6); 34 CFR 662.41, 662.42)

PART 11—APPLICATIONS—[RESERVED]

PART 12—REPORTS—[RESERVED]

[41 FR 10201, Mar. 9, 1976, as amended at 45 FR 22535, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

PART 667—THE INTERNATIONAL UNDERSTANDING PROGRAM

Subpart A—General

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667.2 Who is eligible to apply for a grant under this program?
667.3 What regulations apply to the International Understanding Program?
667.4 What definitions apply to the International Understanding Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

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Subpart D—How Does the Secretary Make a Grant?

667.30 How does the Secretary evaluate an application?
667.31 What selection criteria does the Secretary use?
667.32 What priorities may the Secretary establish?

Subpart E—What Conditions Must Be Met by a Grantee?

667.41 What costs are ineligible?

AUTHORITY: Part N of Title III of the Elementary and Secondary Education Act of 1965, (Pub. L. No. 89-10), as amended, 20 U.S.C. 3063-3065.

SOURCE: 45 FR 86883, Dec. 31, 1980, unless otherwise noted.

Subpart A—General

§ 667.1 What is the International Understanding Program?

The International Understanding Program provides Federal financial assistance to stimulate, at all levels of education, programs to—

(a) Increase the understanding of students and the public in the United States about the cultures, actions, and interconnections of nations and peoples; and

(b) Enable these students and the public to better evaluate the international and domestic impact of major national policies and actions of the United States.

(20 U.S.C. 3064)

§ 667.2 Who is eligible to apply for a grant under this program?

Any public or private agency or organization is eligible to apply for a grant under this program. This includes, but is not limited to, institutions of higher education, State and local educational agencies, professional associations, educational consortia, and organizations of teachers.

(20 U.S.C. 3064(a))

§ 667.3 What regulations apply to the International Understanding Program?

The following regulations apply to this program:

(a) The regulations referred to in 34 CFR 655.3 (a) and (b).

(b) The regulations in this Part 667.

(20 U.S.C. 3063-3065)

§ 667.4 What definitions apply to the International Understanding Program?

The definitions in 34 CFR 655.4 apply to this program.

(20 U.S.C. 3063-3065)

Subpart B—What Kinds of Projects Does the Secretary Assist under This Program?

§ 667.10 What types of projects does the Secretary assist?

(a) An applicant may apply for a grant to conduct any of the following types of projects:

(1) The in-service training of teachers and other educational personnel with regard to the cultures, actions, and interconnections of nations and peoples.

(2) The development of materials to link language learning to international studies.

(3) The compilation—in forms useful to various types of educational programs—of existing information and resources pertaining to—

(i) Cultures, actions, and interconnections of nations and peoples;

(ii) Regions of the world; or

(iii) Global issues.

(4) The dissemination—to educators and educational officials on their request—of information and resources pertaining to the cultures, actions, and interconnections of nations.

(5) The introduction by a local educational agency (LEA) of instruction in foreign languages—

(i) Designated by the Secretary as having critical importance for the Nation; and

(ii) That have not been offered by the schools of that LEA in the three academic years ending prior to the calendar year in which the grant is made.

(b) The projects described in paragraphs (a)(1) through (a)(4) of this section may include projects at all levels of education, as well as projects conducted as part of community, adult, and continuing education programs.

(20 U.S.C. 3064)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 667.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 667.31.

(b) The criteria are equally weighted.

(c) In addition to considering the criteria in § 667.31, the Secretary seeks to achieve a wide distribution of awards throughout the United States.

(20 U.S.C. 3064)

§ 667.31 What selection criteria does the Secretary use?

(a) *Plan of operation.* (See 34 CFR 655.31(a))

(b) *Quality of key personnel.* (See 34 CFR 655.31(b))

(c) *Budget and cost effectiveness.* (See 34 CFR 655.31(c))

(d) *Evaluation plan.* (See 34 CFR 655.31(d))

(e) *Adequacy of resources.* (See 34 CFR 655.31(e))

(f) *Need.* (1) The Secretary reviews each application for information that shows the need for the proposed project.

(2) The Secretary looks for information that shows—

(i) That the proposal is based on a demonstrated need;

(ii) That the need is of sufficient importance to warrant Federal assistance; and

(iii) A direct relationship between the expressed need and the plan, goals, and objectives of the project.

(g) *Relevance to the International Understanding Program.* (1) The Secretary reviews each application for information that shows the relevance of the proposed project to the International Understanding Program.

(2) The Secretary looks for information that shows that the proposed project is likely to—

(i) Increase the understanding of students and the public about the cultures, actions, and interconnections of nations and peoples; and

(ii) Enable these students and the public to make more informed judgments with respect to the policies and actions of the United States.

(h) *Non-Federal resources.* (1) The Secretary reviews each application for information that shows the applicant's commitment to the maximum use of non-Federal resources for the proposed project.

(2) The Secretary looks for information that shows—

(i) The applicant's use of non-Federal resources in the establishment of the proposed project; and

(ii) The applicant's use of non-Federal resources in the operation of the proposed project.

§ 667.32 What priorities may the Secretary establish?

(a) The Secretary may announce in any given year that all or portions of the funds available for awards will be reserved for projects that focus on specific aspects or authorized activities from among the types of projects in § 667.10.

(b) These priorities relate to the following:

(1) Projects involving the media.

(2) Projects that focus on particular global issues or regional or cultural studies.

(3) Projects that serve clientele—

(i) From particular levels of education;

(ii) From specific disciplines; or

(iii) Associated with certain educational endeavors.

(c) The Secretary announces any priorities referred to in paragraph (a) of this section in the application notice published in the FEDERAL REGISTER.

(20 U.S.C. 3064)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 667.41 What costs are ineligible?

Funds awarded under this part may not be used for the acquisition of equipment or the remodeling of facilities.

(20 U.S.C. 3064 (b)(1))

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

Subpart A—General

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APPENDIX A—[RESERVED]
APPENDIX B—STANDARDS FOR AUDIT OF GOVERNMENTAL ORGANIZATIONS, PROGRAMS, ACTIVITIES, AND FUNCTIONS (GAO)
APPENDIX C—APPENDIX I, STANDARDS FOR AUDIT OF GOVERNMENTAL ORGANIZATIONS, PROGRAMS, ACTIVITIES, AND FUNCTIONS (GAO)

AUTHORITY: Sections 435, 481, 485, 487, 490 and 1201(a) of the Higher Education Act of 1965 as amended (20 U.S.C. 1085, 1088, 1092, 1094, 1097, and 1141(a), unless otherwise noted.

SOURCE: 45 FR 86855, Dec. 31, 1980, unless otherwise noted.

Subpart A—General

§ 668.1 Scope.

(a)(1) This part establishes general rules that apply to an institution of higher education or a vocational school that participates in any student financial assistance program authorized by title IV of the Higher Education Act of 1965 as amended. (title IV student assistance programs)

(2) As used in this part:

(i) An institution of higher education includes a public or private nonprofit institution as defined in § 668.2, a proprietary institution as defined in § 668.3, and a postsecondary vocational institution as defined in § 668.4, and

(ii) A vocational school is a school as defined in section 435(c) of the Higher Education Act of 1965 as amended. (20 U.S.C. 1085(c)).

(b) The title IV student assistance programs include—

(1) The Pell Grant Program previously known as the Basic Educational Opportunity Grant program (20 U.S.C. 1070a; 34 CFR Part 690);

(2) The Supplemental Educational Opportunity Grant Program (SEOG or Supplemental Grants—20 U.S.C. 1070b *et seq;* 34 CFR Part 676);

(3) The State Student Incentive Grant Program (SSIG—20 U.S.C. 1070c *et seq;* 34 CFR Part 692);

(4) The Guaranteed Student Loan Program (GSL—20 U.S.C. 1071 *et seq;* 34 CFR Part 682);

(5) The Parent Loans for Undergraduate Students Program (PLUS—20 U.S.C. 1078-2; 34 CFR Part 683);

(6) The College Work-Study Program (CWS—42 U.S.C. 2751 *et seq;* 34 CFR Part 675); and

(7) The National Direct Student Loan Program (NDSL—20 U.S.C. 1087aa *et seq;* 34 CFR Part 674);

(20 U.S.C. 1070 *et seq.*)

§ 668.2 Public or private nonprofit institution of higher education.

A "public or private nonprofit institution of higher education" is:

(a) An educational institution which—

(1) Is in a State;

(2) Admits as regular students only persons who—

(i) Have a high school diploma,

(ii) Have the recognized equivalent of a high school diploma, or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located and, if the institution seeks to participate in a title IV student assistance program other than the GSL or PLUS program, have the ability to benefit from the training offered;

(3) Is legally authorized to provide an educational program beyond secondary education in the State in which the institution is physically located;

(4) Provides—

(i) An educational program for which it awards an associate, baccalaureate, graduate, or professional degree, or

(ii) At least a two-year program which is acceptable for full credit toward a baccalaureate degree, or

(iii) At least a one-year training program which leads to a certificate or degree and prepares students for gainful employment in a recognized occupation; and

(5) Is—

(i) Accredited by a nationally recognized accrediting agency or association,

(ii) Approved by a State agency recognized by the Secretary as a reliable authority on the quality of public postsecondary vocational education in its State, if the institution is a public postsecondary vocational educational institution,

(iii) An institution which has satisfactorily assured the Secretary that it will meet the accreditation standards of an approved agency or association within a reasonable time, considering the resources available to the institution, the period of time it has operated and its efforts to meet accreditation standards, or

(iv) An institution whose credits are determined by the Secretary to be accepted on transfer by at least three accredited institutions on the same basis as transfer credits from fully accredited institutions;

(b)(1) If an institution seeks to participate solely in the GSL or PLUS programs and cannot be accredited or approved because there is no nationally recognized accrediting agency or association qualified to accredit or approve that type of institution, the institution satisfies the requirement of paragraph (a)(5) of this section if it is approved by a committee appointed by the Secretary for that purpose in accordance with the standards of content, scope, and quality that the committee prescribes.

(2) An institution that has been approved by the Committee must, in order to remain an eligible school, become accredited within three years after the Secretary has designated a nationally recognized accrediting agency for the type of institution applying for eligibility.

(c) For the purpose of this definition, the Secretary publishes a list of nationally recognized accrediting agencies or associations and State approval agencies that the Secretary has determined to be reliable authority as to the quality of education or training offered.

(20 U.S.C. 1085, and 1141(a))

§ 668.3 Proprietary institution of higher education.

A "proprietary institution of higher education" is:

(a) An educational institution which—

(1) Is not a public or other nonprofit institution;

(2) Is in a State;

(3) Admits as regular students only persons who—

(i) Have a high school diploma,

(ii) Have the recognized equivalent of a high school diploma, or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located and have the ability to benefit from the training offered;

(4) Is legally authorized to provide postsecondary education in the State in which it is physically located;

(5) Provides at least a six-month program of training to prepare students for gainful employment in a recognized occupation;

(6) Is accredited by a nationally recognized accrediting agency or association; and

(7) Has been in existence for at least two years. The Secretary considers a school to have been in existence for two years if it has been legally authorized to provide, and has provided, a continuous training program to prepare students for gainful employment in a recognized occupation during the 24 months (except for normal vacation periods) preceding the date of application for eligibility.

(b) For the purpose of this definition, the Secretary publishes a list of nationally recognized accrediting agencies or associations that the Secretary has determined to be reliable authority as to the quality of education or training offered.

(20 U.S.C. 1141(a), 20 U.S.C. 1088(b))

§ 668.4 Postsecondary vocational institution.

A "postsecondary vocational institution" is:

(a) A public or private nonprofit educational institution which—

(1) Is in a State;

(2) Admits as regular students only persons who—

(i) Have a high school diploma,

(ii) Have the recognized equivalent of a high school diploma, or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located and have the ability to benefit from the training offered;

(3) Is legally authorized to provide an educational program beyond secondary education in the State in which the institution is physically located;

(4) Provides at least a six-month program of training to prepare students for gainful employment in a recognized occupation;

(5) Is—

(i) Accredited by a nationally recognized accrediting agency or association,

(ii) Approved by a State agency recognized by the Secretary as a reliable authority on the quality of public postsecondary vocational education in its State, if the institution is a public postsecondary vocational educational institution,

(iii) An institution which has satisfactorily assured the Secretary that it will meet the accreditation standards of an approved agency or association within a reasonable time, considering the resources available to the institution, the period of time it has operated and its efforts to meet accreditation standards, or

(iv) An institution whose credits are determined by the Secretary to be accepted on transfer by at least three accredited institutions on the same basis as transfer credits from fully accredited institutions;

(6) Has been in existence for at least two years. The Secretary considers an institution to have been in existence for two years if it has been legally authorized to provide, and has provided, a training program on a continuous basis to prepare students for gainful employment in a recognized occupation during the 24 months (except for normal vacation periods) preceding the date of application for eligibility.

(b) For the purposes of this definition the Secretary publishes a list of nationally recognized accrediting agencies or associations and State approval agencies that the Secretary has determined to be reliable authority as to the quality of education or training offered.

(20 U.S.C. 1141(a), 20 U.S.C. 1088)

§ 668.5 Recognized equivalent of a high school diploma.

The "recognized equivalent of a high school diploma" is—

(a) A General Education Development (GED) Certificate, or

(b) A State certificate received by a student after the student has passed a State authorized examination, which that State recognizes as the equivalent of a high school diploma.

(20 U.S.C. 1141(a))

§ 668.6 Ability to benefit.

(a) "Ability to benefit" means that a person admitted to an institution of higher education has the ability to benefit from the education or training he or she is to receive.

(b)(1) An institution that admits as regular students persons who do not have a high school diploma or the recognized equivalent of a high school diploma and who are beyond the age of compulsory school attendance in the State in which the institution is located, shall develop and consistently apply criteria for determining whether these students have the ability to benefit from the education or training offered.

(2) An institution must be able to demonstrate, upon request of the Secretary, that these students have the ability to benefit.

(20 U.S.C. 1088, 1141)

§ 668.7 One year training program.

A "one year training program" is a program which is at least—

(a) 24 semester or trimester hours or units, or 36 quarter hours or units at an institution using credit hours or units to measure progress;

(b) 900 clock hours of supervised training at an institution using clock hours to measure progress; or

(c) 900 hours of preparation in a correspondence program.

(20 U.S.C. 1141(a))

§ 668.8 Six month training program.

(a) A "six month training program" is a program which is at least—

(1) 16 semester or trimester hours or units, or 24 quarter hours or units, at an institution using credit hours or units to measure progress;

(2) 600 clock hours of supervised training at an institution using clock hours to measure progress;

(3) 600 hours of preparation in a correspondence program.

(b) In lieu of the credit or clock hour requirements of paragraphs (a)(1) or (a)(2) of this section, the Secretary may determine that an institution offers a six-month training program if—

(1) The accrediting association that accredits the institution certifies that the program offered by the institution is equal in course content and student work load to the comparable clock or credit hour program described in paragraphs (a)(1) or (a)(2) of this section, and

(2) The Secretary determines that the institution's course content and student work load requirements support that determination.

(20 U.S.C. 1088)

§ 668.9 Civil rights requirements.

An institution participating in any title IV program must comply with the following civil rights statutes and regulations.

Subject	Statute	Regulation
Discrimination on the basis of race, color or natural origin.	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d-4).	34 CFR Part 100.
Discrimination on the basis of sex.	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1683).	34 CFR Part 106.
Discrimination on the basis of handicap.	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).	34 CFR Part 104.
Discrimination on the basis of age.	The Age Discrimination Act (42 U.S.C. 6101 *et seq.*).	

§ 668.10 Criminal penalties.

Section 490 of the Higher Education Act of 1965 provides as follows:

(a)(1) Any person who knowingly and willfully embezzles, misapplies, steals, or obtains by fraud, false statement, or forgery any funds, assets, or property provided or insured under any title IV student assistance program shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(2) However if the amount so embezzled, misapplied, stolen, or obtained by fraud, false statement, or forgery does not exceed $200, the fine shall not be more than $1,000 and imprisonment shall not exceed one year, or both.

(b) Any person who knowingly and willfully makes any false statement, furnishes any false information, or conceals any material information in connection with the assignment of a loan which is made or insured under this title shall, upon conviction thereof, be fined not more than $1,000 or imprisoned not more than one year, or both.

(c) Any person who knowingly and willfully makes an unlawful payment to an eligible lender under the GSL or PLUS programs as an inducement to make, or to acquire by assignment, a loan insured under one of those programs shall, upon conviction thereof, be fined not more than $1,000 or imprisoned not more than one year, or both.

(d) Any person who knowingly and willfully destroys or conceals any record relating to the provision of assistance under any title IV student assistance program with intent to defraud the United States or to prevent the United States from enforcing any right obtained by subrogation under this part, shall, upon conviction thereof, be fined not more than $10,000 or imprisoned not more than five years, or both.

(20 U.S.C. 1097)

Subpart B—Standards for Audits, Records, Financial Responsibility, Administrative Capability and Disposition of Refunds

§ 668.11 Scope—Participation agreement.

(a) This subpart applies to an education institution that satisfies the definition of:

(1) A public or private nonprofit institution of higher education set forth in § 668.2;

(2) A proprietary institution of higher education set forth in § 668.3;

(3) A postsecondary vocational institution set forth in § 668.4; and

(4) A vocation school set forth in section 435(c) of the Higher Education Act.

(b) This subpart describes standards that an institution referred to in paragraph (a) of this section must meet in order to participate in any title IV student assistance program. These standards concern the conduct of audits, the maintenance of records, financial responsibility, administrative capability, and the distribution of institutional refunds.

(c) Noncompliance with these provisions may subject an institution to proceedings under Subpart G. These procedures may lead to a fine or a limitation, suspension, or termination of the institution's eligibility to participate in any or all of the title IV student assistance programs.

(d) *Institutional participation agreement.* (1) An eligible institution must enter into a written agreement with the Secretary, on a form approved by the Secretary, in order to participate in any of the title IV student assistance programs other than the State Student Incentive Grant Program.

(2) This agreement conditions the initial and continued eligibility of the institution to participate in the title IV student assistance programs upon compliance with the provisions of this part and the individual program requirements.

(20 U.S.C. 1094)

§ 668.12 Audits, records and examination.

(a) If an institution participates in the National Direct Student Loan (34 CFR Part 674), College Work-Study (34 CFR Part 675), Supplemental Educational Opportunity Grant (34 CFR Part 676), Guaranteed Student Loan (34 CFR Part 682), the Parent Loans for Undergraduate Students (34 CFR Part 683), or Pell Grant (34 CFR Part 690) Programs, it shall comply with the regulations for those programs concerning (1) fiscal and accounting systems, (2) biennial audits of institutional transactions, (3) program and fiscal recordkeeping, and (4) record retention.

(b)(1) Any individual who conducts an audit must be sufficiently independent of those authorizing the expenditure of Federal funds to produce unbiased opinions, conclusions, or judgments. The independence of this individual shall be judged by the criteria set forth in part III, chapter 3 of the U.S. General Accounting Office publication *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions.* Additionally, auditors other than employees of a State or local government shall meet the qualifications criteria set forth in appendix I of the GAO document. (These documents are included as Appendices B and C of this part.)

(2) The institution must provide that any individual or firm conducting an audit described in this section shall give the Education Department's Inspector General or the Secretary access to records or other documents necessary to review the results of the audit.

(3) Upon written request, an institution shall give the Secretary access to all program and fiscal records, including records reflecting transactions with any financial institution with which it deposits or has deposited any title IV funds.

(c)(1) With respect to each student recipient of title IV financial aid, an institution shall establish and maintain on a current basis records regarding—

(i) The student's admission to, and enrollment status at, the institution;

(ii) The program and courses in which the student is enrolled;

(iii) Whether—according to the written standards and practices of the institution—the student is making satisfactory progress toward completion of his or her course of study;

(iv) Any refunds due or paid the student;

(v) The student's placement by the institution in a job if the institution provides a placement service and the student uses that service; and

(vi) The student's receipt of financial aid (see § 668.14).

(2)(i) An otherwise eligible institution shall establish and maintain records regarding the educational qualifications of each regular student, whether or not the student receives title IV aid, which are relevant to the institution.

(ii) An institution where only certain programs have been determined eligible shall establish and maintain records regarding the admissions requirements and educational qualifications of each regular student enrolled in the eligible program(s) whether or not the student received title IV aid.

(3) Records shall be—

(i) Systematically organized; and

(ii) Readily available for review by the Secretary at the geographical location where the students will receive their degrees or certificates of program or course completion.

(20 U.S.C. 1094.)

§ 668.13 Audit exceptions and repayments.

(a)(1) If—as a result of its own audit or an audit performed at the direction of the institution—the Education Department's Inspector General questions an expenditure or the institution's compliance with an applicable requirement, the Inspector General notifies the Secretary and the institution of the questioned expenditure or procedure.

(2) If the institution believes that the questioned expenditure or procedure was proper, it shall notify the Secretary in writing of its position and the reasons for its position.

(3) The institution's response must be received by the Secretary within 35 days of the date of the audit agency's notification to the institution.

(b)(1) Based on the audit finding and the institution's response, the Secretary determines the amount of funds improperly spent, if any, and instructs the institution as to the manner or repayment.

(2) The institution shall repay those funds within 60 days of the date of the Secretary's notification, unless the Secretary permits a longer repayment period.

(20 U.S.C. 1094.)

§ 668.14 Financial aid transcript.

(a)(1) *Disbursing money only after receiving a transcript—general rule.* If informed by a student that he or she attended another eligible institution on at least a half-time basis, the institution the student is currently attending shall not disburse any title IV funds (other than Guaranteed Student Loan and Parent Loans for Undergraduate Students checks where the institution is not the lender) to that student before obtaining a properly signed financial aid transcript from the institution or institutions the student previously attended, unless the other institution or institutions each indicate, in writing that they are not required to provide a transcript under the provisions of paragraph (b) or paragraph (c)(2) or (c)(3) of this section. The student's current institution may disburse title IV funds on the basis of such a written notice or notices.

(2) *Limited exception to the general rule.* The institution the student is currently attending may disburse title IV funds to a student for one payment period if it does not receive in a timely manner the requested transcript or a written notice that the transcript will not be forthcoming as provided in paragraph (d) of this section.

(b) *Providing a transcript—general rule.* (1) Upon request, an institution shall provide to another institution a financial aid transcript for a current or former student who received, while attending the institution—

(i) A Pell Grant during the award period in which the request for the transcript is made;

(ii) A Supplemental Grant; or

(iii) A National Direct Student Loan.

(2) The institution shall honor a request for a transcript from a student or the institution the student is attending or planning to attend.

(3) The institution shall provide the transcript in a timely manner.

(4) The transcript must be signed by an official authorized by the institution to sign such transcripts.

(c) *Exceptions to the general rule in paragraph (b) of this section.* An institution does not have to provide the requested transcript if—

(1) The subject student—

(i) Is in default on any title IV loan made or received for attendance at that institution; or

(ii) Owes a refund on any title IV grant received for attendance at that institution;

(2) The transcript would only include information based on records that the institution is no longer required to keep under the record retention regulations referred to under § 668.12(a); or

(3) The institution participates in the Pell Grant Program under the Alternate Disbursement System and does not also participate in the Supplemental Grant or National Direct Student Loan program in the award period in which the request for the transcript is received.

(d) *Notifying the student's new institution in a timely manner that the transcript is not forthcoming.* If an institution has been requested to provide a transcript but is not required to do so according to paragraph (b) or paragraph (c) of this section, it must notify the student's new institution in writing in a timely manner that the transcript will not be forthcoming and specify the reason for the refusal.

(e) *Information included in a student's financial aid transcript.* A student's financial aid transcript shall include, with respect to any year for which the institution is required to keep that student's financial aid records, at least the following information—

(1) The student's name and social security number;

(2) Whether the student received a Supplemental Grant in any award year;

(3) For the award period in which the request for the transcript is made,

(i) The student's Scheduled Pell Grant and the amount of Pell Grant funds disbursed to the student.

(ii) The amount of Supplemental Grants disbursed to the student;

(4) The amount of National Direct Student Loans advanced to the student during each award year;

(5) Whether the student is in default on—

(i) A National Direct Student Loan made by the institution, or

(ii) A Guaranteed Student Loan or a Parent Loan for Undergraduate Students the student received for attendance at the institution if the institution is aware of the default status, and

(6) Whether the student owes a refund on—

(i) A Pell or Supplemental Grant for attendance at the institution, or

(ii) A State Student Incentive Grant received for attendance at the institution, if the institution is aware that the student owes the refund.

(20 U.S.C. 1091, 1094.)

§ 668.15 Factors of financial responsibility.

(a) An institution is financially responsible if it is able to—

(1) Provide the educational services stated in its official publications and statements;

(2) Provide the administrative resources necessary to comply with the requirements of this subpart; and

(3) Meet all its financial obligations including refunds.

(b) The Secretary considers that an institution is not financially responsible if—

(1) Under a cash or accrual system of accounting, it—

(i) Has a history of operating losses, or

(ii) Had, for its latest fiscal year, a deficit net worth. A deficit net worth occurs when the institution's liabilities exceed its assets; or

(2) Under an accrual system of accounting, it had at the end of its latest fiscal year, a ratio of current assets to current liabilities of less than 1:1; or

(3) Under a fund accounting system its unrestricted current or operating

fund reflects a history of sustained material deficits.

(c) The Secretary determines that an institution is financially responsible under paragraphs (a) and (b) of this section by evaluating documents submitted by the institution. Upon request of the Secretary, the institution must submit for its *latest* complete fiscal year—

(1) A statement of profit and loss and a balance sheet, or for fund accounting, a fund statement; or

(2) An audit prepared by a State or local audit agency for a public institution; or

(3) A certified audit prepared by a certified or licensed public accountant for a non-public institution.

(d) The Secretary may determine that an institution is financially responsible even though it does not appear so under paragraphs (a), (b) and (c) of this section. To enable the Secretary to make this determination, the Secretary may request the institution to submit for its *current* fiscal year—

(1) (i) A statement of profit and loss and a balance sheet, or for fund accounting, a fund statement, or

(ii) An audit prepared by a State or local audit agency for a public institution; or

(iii) A certified audit prepared by a certified or licensed public accountant for a non-public institution; and

(2) Other appropriate documents that will demonstrate to the Secretary that it has sufficient financial responsibility and capability to continue to participate in the title IV programs in spite of its inability to meet the requirements of paragraphs (a), (b), and (c) of this section.

(e)(1) The Secretary may require that the statement of profit and loss, balance sheet and fund statement referred to in paragraphs (c)(1) and (d)(1) of this section be audited and certified by a certified public accountant.

(2) If the Secretary requires an institution to submit under paragraphs (c) and (d) of this section a statement of profit and loss a balance sheet, a fund statement or an audit, the Secretary may also require the institution to submit the accountant's notes for that work which must be audited and certified by a certified public accountant.

(f)(1)(i) An otherwise eligible institution shall obtain and keep current adequate fidelity bond coverage in order to protect the Government's interest in the title IV funds it receives as a trustee.

(ii) However, a public institution that is bonded by the State against the type of losses described in paragraph (f)(2) of this section does not have to obtain additional fidelity bond coverage.

(2) A fidelity bond indemnifies the holder against losses resulting from fraud of lack of integrity, honesty, or fidelity of one or more of its employees or officers.

(3) Any bond required under this paragraph shall be obtained from companies holding certificates of authority as acceptable sureties (31 CFR Part 223). A list of these companies is published annually by the Department of the Treasury in its Circular 570.

(20 U.S.C. 1094.)

§ 668.16 Standards of administrative capability.

To participate in a title IV student financial aid program, an institution must be able to adequately administer those programs. The Secretary considers an institution to have that capability if it establishes and maintains required student and financial records and if it—

(a) Designates a capable individual to be responsible for—

(1) Administering all the title IV student assistance programs in which it participates, and

(2) Coordinating the title IV programs with the institution's other Federal and non-Federal programs of student financial assistance;

(b) Communicates to the individual designated to be responsible for administering title IV programs, all the information received by any institutional office that bears on a student's title IV eligibility.

(c) Uses an adequate number of qualified persons to administer those programs. In determining whether an institution uses an adequate number of qualified persons, the Secretary considers the number of students aided, the number and types of programs in which the institution participates, the number of applications evaluated, the amount of funds administered, and the financial aid delivery system used by the institution;

(d)(1) Administers title IV programs with adequate checks and balances in its system of internal controls, and

(2) Divides the functions of authorizing payments and disbursing funds so that no office has responsibility for both functions with respect to any particular student aided under the programs;

(e) Establishes, publishes, and applies, reasonable standards for measuring whether a student receiving aid under any title IV program is maintaining satisfactory progress in his or her course of study;

(f) Develops an adequate system to verify the consistency of the information it receives from different sources with respect to a student's application for financial aid under title IV programs. In determining whether the institution has an adequate verification system, the Secretary considers whether the institution reviews—

(1) All student aid applications, need analysis documents, statements of educational purpose, and eligibility notification documents presented by or on behalf of each applicant,

(2) Any documents, including any copies of State and Federal Income Tax returns, that are normally collected by the institution to validate information received from other sources, and

(3) Any other information normally available to the institution regarding a student's citizenship, previous educational experience or other factors relating to the student's eligibility for title IV funds; and

(g) Provides adequate financial aid counseling to eligible students who apply for title IV aid. In determining whether an institution provides adequate counseling, the Secretary considers whether its counseling includes information regarding—

(1) The source and amount of each type of aid offered,

(2) The method by which aid is determined and disbursed or applied to a student's account, and

(3) The rights and responsibilities of the student with respect to enrollment at the institution and receipt of financial aid. This information includes the institution's refund policy, its standards of satisfactory progress, and other conditions that may alter the student's aid package.

(20 U.S.C. 1094)

§ 668.17 Additional factors for evaluating administrative capability and financial responsibility.

(a) The Secretary considers that loan default and withdrawal rates may impair an institution's capability of properly administering student financial aid programs authorized under title IV if—

(1) The default rate on Guaranteed Student Loans, Parent Loans for Undergraduate Students or National Direct Student Loans made to students for attendance at that institution exceeds 20 percent of the principal of all those loans that have reached the repayment period; or

(2) For an institution that has a common academic year for a majority of its students, more than 33 percent of the regular students who are enrolled at the beginning of an academic year withdraw from enrollment at that institution during that academic year; or

(3) For an institution which does not have a common academic year for a majority of its students, more than 33 percent of the regular students enrolled at the beginning of any 8-month period withdraw during that period.

(b)(1) If the default or withdrawal rates for an institution are as high as or higher than the rates set forth in paragraph (a), of this section and the Secretary believes that these rates impair the institution's administrative capability, the Secretary may require the institution to submit for its *latest complete* fiscal year a profit and loss statement, balance sheet or audit.

(2) An audit must be—

(i) Prepared by a State or local audit agency for a public institution, or

(ii) Prepared by a certified public accountant or licensed public accountant for a nonpublic institution;

(3) The date of the statement's preparation shall be within 12 months of the date of the Secretary's request.

(c) The Secretary may require that the profit and loss statement and balance sheet referred to in paragraph (b)(1) of this section be audited and certified by a certified public accountant.

(d)(1) If the Secretary determines that the loan default or withdrawal rates for an institution impairs its capability to administer any financial aid program authorized under title IV, the Secretary requires the institution to take reasonable and appropriate measures to alleviate those conditions as a requirement for its continued participation in those programs.

(2) Before initiating that action, the Secretary informs the institution of the findings and provides it at least 35 days to respond.

(3) The institution may respond by—

(i) Demonstrating that the conditions do not have an adverse effect on the administration of the programs, or

(ii) Submitting a plan of the action it will take to alleviate those conditions.

(20 U.S.C. 1094)

§ 668.18 Change in ownership or control.

(a) An eligible institution, or a previously eligible institution that participated in any title IV student assistance program, that changes ownership resulting in a change in control is not considered by the Secretary to be the same institution unless—

(1) The new owner agrees to be liable, or the old and new owners agree to be jointly and severally liable, for all improperly spent title IV funds provided to the institution before the effective date of the change;

(2) The new owner agrees—

(i) To abide by the institution's refund policy in effect before the effective date of the change for students who were enrolled before the effective date, and

(ii) To honor all student enrollment contracts that were signed by the institution before the effective date of the change; and

(3) The institution submits individual statements for both new and former owners listing their assets, liabilities, and net worth, and either—

(i) A profit and loss statement and balance sheet for the institution's latest complete fiscal year, or

(ii) An audit for the institution's latest complete fiscal year prepared by a certified or licensed public accountant; and

(4) The institution submits additional financial documents if requested by the Secretary because the financial information provided in subparagraph (3) of this paragraph is insufficient.

(b) The Secretary may require that the statements provided in paragraphs (a)(3)(i) and (a)(3)(ii) of this section be audited and certified by a certified public accountant.

(c) For purposes of this subpart, "change in ownership that results in a change in control," means any action by which a person or corporation obtains authority to control the actions of an institution. These actions may include, but are not limited to—

(1) The transfer of the controlling interest of stock of an institution to its parent corporation;

(2) The merger of two or more institutions;

(3) The division of one institution into two or more institutions;

(4) The transfer of the assets of an institution to its parent corporation; or

(5) The transfer of the liabilities of an institution to its parent corporation.

(20 U.S.C. 1094)

§ 668.19 Contracting for educational programs or courses.

(a) An institution may, without losing its eligibility to participate in any title IV student assistance program, enter into a written contract or agreement to have a portion of its educational programs provided by another institution, school, or organization if the written contract or agreement satisfies the requirements of paragraphs (b) and (c) of this section.

(b) The otherwise eligible institution must give credit to students in the contracted portion portion of the program on the same basis as if it provided the portion of the program itself.

(c) The otherwise eligible institution must enter into a contract with—

(1) Another eligible institution; or

(2) An ineligible institution, school or organization if:

(i) The contracted portion of the program does not exceed 25 percent of the student's total program of study; or

(ii) The otherwise eligible institution's accrediting agency, or State agency for the approval of public postsecondary vocational education, determines that its contractual arrangement meets the agency's standards for contracting for educational services.

(20 U.S.C. 1094)

§ 668.20 Institutions stop providing educational instruction—loss of eligibility.

(a) When an institution stops providing educational instruction or loses eligibility it shall—

(1) Notify the Secretary of that fact;

(2) Refund to the Federal government, or otherwise dispose of by instructions from the Secretary, any unobligated title IV funds it has received, except—

(i) Those funds it has committed but not yet paid to students in that payment period, and

(ii) Its administrative allowance, if applicable;

(3) Submit to the Secretary within 45 days after the effective date of closing or loss of eligibility—

(i) All financial, performance, and other reports required by each appropriate title IV program regulation, and

(ii) An audit of all title IV funds it received;

(4) Inform the Secretary of the arrangements it has made for the proper retention and storage of all records concerning the administration of title IV programs. These records must be retained for a minimum of five years;

(5) Inform the Secretary of how it will provide for the collection of any outstanding title IV student loans; and

(6) Make refunds of unearned tuition and fees according to § 668.21 of this subpart.

(20 U.S.C. 1094)

§ 668.21 Distribution formula for institutional refunds and repayments of cash disbursements made directly to the student.

(a) *Institutional refunds to title IV programs.* (1) If a refund is due to a student under the institution's refund policy and the student received financial aid under any title IV student financial aid program other than the College Work-Study Program, a portion of the refund shall be returned to the title IV student assistance program(s).

(2) Except as provided in paragraph (a)(3) of this section the institution shall multiply the institutional refund by the following fraction to determine the portion of the refund to be returned to the title IV program(s):

$$\frac{\text{total amount of title IV aid (exclusive of work earnings) awarded for the payment period}}{\text{total amount of aid (exclusive of work earnings) awarded for the payment period}}$$

(3) If a student has received Pell Grant funds at the institution under the Alternate Disbursement System,

(i) The institution shall use the following fraction in lieu of the fraction in paragraph (a)(2) of this section to determine the portion of the refund to be returned to the title IV programs (other than the Pell Grant program.)

$$\frac{\text{total amount of title IV aid (exclusive of work earnings and Pell Grant funds) awarded for the payment period}}{\text{total amount of aid (exclusive of work earnings and Pell Grant funds) awarded for the payment period}}$$

(ii) The institution shall notify the Secretary of the amount of money that it is returning to the title IV program according to paragraph (a)(3)(i) of this section.

(b) *Distribution among the title IV programs.* (1) The institution shall develop written policies allocating the title IV portion of the refund to the various title IV programs from which the student received aid. These policies shall be applied on a consistent basis to all students receiving title IV funds.

(2) The portion of a refund allocated to a program may not exceed the amount a student received from that program.

(3) As provided in 34 CFR 682.610 of the Guaranteed Student Loan Program regulations and 34 CFR 683.85 of the Parent Loans for Undergraduate Students Program regulations, the institution shall return to the student's lender any portion of a refund which is allocable to a loan made under the Guaranteed Student Loan Program or the Parent Loans for Undergraduate Students Program.

(c) *Distribution of repayments of cash disbursements made directly to the student for non-institutional costs.* (1) Any cash that an institution disbursed to a student for a payment period under any title IV program other than the College Work-Study, Guaranteed Student Loan or Parent Loans for Undergraduate Students Program becomes an overpayment if before the first day of classes of that payment period the student officially withdraws, drops out, or is expelled.

(2) An institution shall determine, under paragraph (c)(3) of this section, whether any cash it disbursed to a student for a payment period under any title IV program other than the College Work-Study, Guaranteed Student Loan or Parent Loans for Undergraduate Students program amounts to an overpayment if the student withdraws, drops out, or is expelled on or after the first day of classes of that payment period.

(3) In determining whether a student received an overpayment for purposes of paragraph (c)(2) of this section, and the amount of that overpayment, the institution shall subtract from the cash disbursed to the student for non-institutional costs, the non-institutional costs that were to be paid by the disbursement for the portion of the payment period during which the student was enrolled. Non-institutional educational costs may include, but are not limited to, room and board (if not contracted for with the institution), books and supplies, transportation and miscellaneous expenses.

(4) If a student drops out, the institution shall use the last recorded day of class attendance by the student as the end of the student's enrollment. However, if it is unable to document the student's last day of attendance, any cash it disbursed to that student for that payment period is an overpayment.

(5) The institution shall multiply the overpayment by the following fraction to determine the portion of the overpayment to be returned to the title IV program(s):

$$\frac{\text{total amount of title IV aid (exclusive of work earnings and GSL and PLUS loans) awarded for the payment period}}{\text{total amount of aid (exclusive of work earnings and GSL and PLUS loans) awarded for the payment period}}$$

(d) *Distribution among the title IV programs.* (1) The institution shall develop written policies allocating the title IV portion of the overpayment owed by the student to the various title IV programs from which the student received aid. These policies shall be applied on a consistent basis to all students receiving title IV aid.

(20 U.S.C. 1094)

§ 668.22 Federal interest in title IV student assistance program funds.

(a) Except for funds received for the administrative cost allowance, funds received by an institution under—

(1) The Pell Grant Program (Regular Disbursement System),

(2) The Supplemental Educational Opportunity Grant Program,

(3) The College Work-Study Program, and

(4) The National Direct Student Loan Program, are held in trust for the intended student beneficiaries. The institution, as a trustee of Federal funds, may not use or hypothecate (i.e., use as collateral) title IV funds for any other purpose.

(b) An institution's administrative cost allowance is established for the Pell Grant Program, the Supplemental Educational Opportunity Grant Program, the College Work-Study Program, and the National Direct Student

Loan Program by section 489 of the Higher Education Act of 1965.

(20 U.S.C. 1070 *et seq.;* 20 U.S.C. 1096)

Subpart C—Student Consumer Information Services

§ 668.31 Scope.

Each institution participating in any student financial assistance program authorized under title IV of the Higher Education Act, including the Pell Grant Program under the Alternate Disbursement System (ADS), shall disseminate to all enrolled students, and to prospective students upon request through appropriate publications and mailings, information concerning—

(a) The institution (see§ 668.35) and

(b) Any student financial assistance available to students enrolled in the institution (see § 668.34).

(20 U.S.C. 1092)

§ 668.32 Definitions.

As used in this subpart:

Act means Title IV of the Higher Education Act (HEA) of 1965, as amended.

Award year means the period of time between July 1 of one year and June 30 of the following year.

Prospective student means any individual who has contacted an institution participating in a title IV student financial assistance program for the purpose of requesting information concerning admission to the institution.

(20 U.S.C. 1092)

§ 668.33 Preparation and dissemination of materials.

For each award year in which it participates in a title IV student assistance program, an institution shall—

(a) If necessary, prepare and publish material covering the topics set forth in § 668.34 and § 668.35,

(b) Make such material available through appropriate publications and mailings to—

(1) All currently enrolled students, and

(2) Any prospective student upon request of that student.

(20 U.S.C. 1092).

§ 668.34 Financial assistance information.

(a)(1) The information on financial assistance that the institution must publish and make readily available to current and prospective students shall include, but is not limited to, a description of all the Federal, State, local, private and institutional student financial assistance programs available to students who enroll at that institution.

(2) These programs include both need-based and non-need-based programs.

(3) The institution may describe its own financial assistance programs by listing them in general categories.

(b) For each program discussed in paragraph (a) of this section, the information provided by the institution shall describe—

(1) The procedures and forms by which students apply for assistance,

(2) The student eligibility requirements,

(3) The criteria for selecting recipients from the group of eligible applicants, and

(4) The criteria for determining the amount of a student's award;

(c) The institution shall describe the rights and responsibilities of students receiving financial assistance and specifically assistance under the Pell Grant, Supplemental Educational Opportunity Grant, State Student Incentive Grant, College Work-Study, National Direct Student Loan, Guaranteed Student Loan, and Parent Loans for Undergraduate Students Programs. This description shall include specific information regarding—

(1) Criteria for continued student eligibility under each program;

(2)(i) Standards which the student must maintain in order to be considered to be making satisfactory academic progress in his or her course of study for the purpose of receiving financial assistance payments, and

(ii) Criteria by which the student who has failed to maintain satisfactory academic progress may re-establish his or her eligibility for financial assistance payments;

(3) The method by which financial assistance payments will be made to

the student and the frequency of such payments;

(4) The terms of any loan received by a student as part of the student's financial assistance package, a sample loan repayment schedule for sample loans and the necessity for repaying loans; and

(5) The general conditions and terms applicable to any employment provided to a student as part of the student's financial assistance package.

(20 U.S.C. 1092)

§ 668.35 Institutional information.

(a) The institutional information that the institution must publish and make readily available to current and prospective students shall include, but is not limited to information on the following subjects:

(1) The cost of attending the institution, including—

(i) Tuition and fees charged to full-time and part-time students;

(ii) Estimates of necessary books and supplies;

(iii) Estimates of typical charges for room and board;

(iv) Transportation costs for commuting students or for students living on or off-campus, and

(v) Any additional cost of a program in which the student is enrolled or expresses a specific interest;

(2) A statement of the refund policy of the institution for the return of unearned tuition and fees or other refundable portion of costs paid to the institution;

(3) A statement of the institution's policies regarding any refund due to the title IV student assistance programs as required by § 668.21;

(4) The academic program of the institution, including—

(i) The current degree programs and other educational and training programs,

(ii) The instructional, laboratory, and other physical facilities which relate to the academic program; and

(iii) The institution's faculty and other instructional personnel;

(5) The names of associations, agencies or governmental bodies which accredit, approve or license the institution and its programs and the procedures by which the documents describing that activity may be reviewed under paragraph (b) of this section.

(6) A description of any special facilities and services available to handicapped students;

(7) A discussion of whether instructional or other physical facilities are readily accessible by handicapped students; and

(8) The titles of persons designated under § 668.36 and information regarding how and where such persons may be contacted.

(b) The institution shall make available for review to any current or prospective student, upon request, a copy of the documents describing the institution's accreditation, approval or licensing.

(20 U.S.C. 1092)

§ 668.36 Availability of employees for information dissemination purposes.

(a) *Availability.* (1) Except as provided in paragraph (b) of this section, each institution shall designate an employee or group of employees who shall be available on a full-time basis to assist current students or prospective students in obtaining the information specified in § 668.34 and § 668.35.

(2) If the institution designates one person, that person shall be available, upon reasonable notice, to any current or prospective students throughout the normal working hours of that institution,

(3) If more than one person is designated, their combined work schedules shall be arranged so that at least one of them is available, upon reasonable notice, throughout the normal administrative working hours of that institution.

(b) *Waiver.* (1) The Secretary may waive the requirement that the employee or group of employees designated under paragraph (a) of this section be available on a full-time basis if the institution's total enrollment, or the portion of the enrollment participating in any title IV student assistance program, is too small to necessitate an employee or group of employees being available on a full-time basis.

(2) In determining whether an institution's total enrollment or the number of title IV recipients is too

small, the Secretary will consider whether there will be an insufficient demand for information dissemination services among its current students or prospective students to necessitate the full-time availability of an employee or group of employees.

(3) To receive a waiver, the institution must apply to the Secretary at the time and in the manner prescribed by the Secretary.

(c) The granting of a waiver under paragraph (b) of this section does not exempt an institution from designating a specific employee or group of employees to carry out on a part-time basis the information dissemination requirements.

(20 U.S.C. 1092)

Subparts D–E—[Reserved]

Subpart F—Misrepresentation

§ 668.61 Scope

(a) This subpart applies to an institution listed in § 668.11(a) of these regulations.

(b) This subpart establishes the standards and rules by which the Secretary may initiate a fine or suspension or termination proceedings against an otherwise eligible institution for any substantial misrepresentation made by that institution regarding the nature of its educational program, its financial charges, or the employability of its graduates.

(20 U.S.C. 1094)

§ 668.62 Special definitions.

"Misrepresentation" means any false, erroneous, or misleading statement an otherwise eligible institution makes to a student enrolled at the institution, to any prospective student, to the family of an enrolled or prospective student, or to the Secretary.

"Prospective student" means any individual who has contacted an otherwise eligible institution for the purpose of requesting information about enrolling at the institution or who has been contacted directly by the institution—or indirectly through general advertising—about enrolling at the institution.

"Substantial misrepresentation" means any misrepresentation on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment.

(20 U.S.C. 1094)

§ 668.63 Nature of educational program.

Misrepresentation by an institution of the nature of its educational program includes, but is not limited to, false, erroneous, or misleading statements concerning—

(a) The particular type(s), specific source(s), nature, and extent of its accreditation;

(b) Whether a student may transfer course credits earned at the institution to any other institution;

(c) Whether successful completion of a course of instruction qualifies a student for—

(1) Acceptance into a labor union or similar organization, or

(2) Receipt of a local, State, or Federal license or nongovernmental certification required as a precondition for employment or to perform certain functions;

(d) Whether its courses are recommended—

(1) By vocational counselors, high schools, or employment agencies, or

(2) By government for government employment;

(e) Its size, location, facilities, or equipment;

(f) The availability, frequency, and appropriateness of its courses and programs to the employment objectives that it states its programs are designed to meet;

(g) The nature, age, and availability of its training devices or equipment and their appropriateness to the employment objectives that it states its programs and courses are designed to meet;

(h) The number, availability, and qualifications, including the training and experience, of its faculty and other personnel;

(i) The availability of part-time employment or other forms of financial assistance;

(j) The nature and availability of any tutorial or specialized instruction, guidance, and counseling, or other supplementary assistance it will provide its students before, during, or after the completion of a course; or

(k) The nature or extent of any prerequisites established for enrollment in any course.

(20 U.S.C. 1094)

§ 668.64 Nature of financial charges.

Misrepresentation by an institution of the nature of its financial charges includes, but is not limited to, false, erroneous, or misleading statements concerning—

(a) Offers of scholarships to pay all or part of a course charge, unless a scholarship is actually used to reduce tuition charges made known to the student in advance. The charges made known to the student in advance are the charges applied to all students not receiving a scholarship; or

(b) Whether a particular charge is the customary charge at the institution for a course.

(20 U.S.C. 1094)

§ 668.65 Employability of graduates.

Misrepresentation by an institution regarding the employability of its graduates includes, but is not limited to, false, erroneous, or misleading statements—

(a) That the institution is connected with any organization or is an employment agency or other agency providing authorized training leading directly to employment;

(b) That the institution maintains a placement service for graduates or will otherwise secure or assist its graduates to obtain employment, unless it provides the student with a clear and accurate description of the extent and nature of this service or assistance; or

(c) Concerning Government job market statistics in relation to the potential placement of its graduates.

(20 U.S.C. 1094)

§ 668.66 Endorsements and testimonials.

The Secretary views as misrepresentation endorsements and testimonials that are not given voluntarily or do not describe current practices and conditions of an institution.

(20 U.S.C. 1094)

§ 668.67 Procedures.

(a) On receipt of a written allegation or complaint from a student, prospective student, the family of a student or prospective student, or a governmental official, the designated ED official, as defined in Subpart G, reviews the allegation or complaint to determine its factual base and seriousness.

(b) If the misrepresentation is minor and can be readily corrected, the designated ED official informs the institution and endeavors to obtain an informal, voluntary correction.

(c) If the designated ED official finds that the complaint or allegation is a substantial misrepresentation as to the nature of the educational programs, the financial charges of the institution, or the employability of its graduates, the official—

(i) Initiates action to fine or to limit, suspend, or terminate the institution's eligibility according to the procedure set forth in subpart G, or

(2) Takes other appropriate action.

(20 U.S.C. 1094)

Subpart G—Fine, Limitation, Suspension and Termination Proceedings

§ 668.71 Scope.

(a) This subpart establishes rules for the imposition of a fine upon, or for the suspension, limitation or termination of, an otherwise eligible institution's participation in any or all of the title IV student assistance programs.

(b) These rules apply to an institution which violates any title IV statutory provision, or any regulation, special arrangement, agreement or limitation prescribed under authority of title IV.

(c) This subpart does not apply to a determination that—

(1) An institution of higher education fails to meet the statutory definition set forth in sections 435, 481 or 1201 of the Higher Education Act;

(2) A vocational school fails to meet the statutory definition set forth in Section 435(c) of the Act; or

(3) An institution fails to qualify for certification to participate in the title IV student assistance programs be-

cause it does not meet the fiscal and administrative standards set forth in subpart B of this part.

(d) This subpart does not apply to administrative action by the Department of Education based on any alleged violation of—

(1) Title VI of the Civil Rights Act of 1964, which is governed by 34 CFR Part 100;

(2) Title IX of the Education Amendments of 1972, (relating to sex discrimination) which is governed by 34 CFR Part 106;

(3) The Family Educational Rights and Privacy Act of 1974 (Section 438 of the General Education Provisions Act, as amended) which is governed by 34 CFR Part 99;

(4) Section 504 of the Rehabilitation Act of 1973 (relating to discrimination on the basis of handicap) which is governed by 34 CFR Part 104; or

(5) The Age Discrimination Act of 1975 which is governed by 45 CFR Part 90.

(20 U.S.C. 1094)

§ 668.72 Definitions.

As used in this subpart:

"Designated ED official" means an official of the Education Department, to whom the Secretary has delegated responsibilities indicated in this subpart.

"Funds" means any money, commitments to provide money and commitments of insurance or reinsurance provided under any or all title IV student assistance programs covered under this subpart to an institution or to students enrolled and attending an institution.

"Institution" means (1) an institution of higher education as defined in Subpart A of this part, (2) a vocational school as defined in section 435(c) of the Higher Education Act (HEA), or (3) with respect to students who are nationals of the United States, an institution outside the United States which is comparable to an institution of higher education or to a vocational school and which has been approved by the Secretary for purposes of participation in title IV student assistance programs covered under this subpart.

(20 U.S.C. 1094)

§ 668.73 Informal compliance procedures.

(a) If the Secretary receives a complaint, or has other information which the Secretary believes to be reliable, indicating that an institution is, or may be, in violation of applicable laws, regulations, special arrangements, agreements, or limitations, the Secretary may call the matter to the attention of the institution and may give it a reasonable opportunity—

(1) To respond to the complaint or other information;

(2) To show that the matter has been corrected; or

(3) To submit an acceptable plan to correct the violation and prevent its recurrence.

(b) The procedures provided in this subpart for a fine or for a suspension, limitation, or termination need not be delayed during the informal compliance procedure if the Secretary believes—

(1) The delay would have an adverse effect on any or all title IV student assistance programs covered under this subpart, or

(2) The informal compliance procedure will not result in a correction of the alleged violation.

(20 U.S.C. 1094)

§ 668.74 Emergency action.

(a) The Secretary through a designated ED official, may take emergency action to withhold funds from an institution or its students and to withdraw the authority of an institution to obligate funds under the HEAL program or any or all title IV student assistance programs covered under this subpart if the designated ED official—

(1) Receives information which the official believes to be reliable that an institution is in violation of applicable laws, regulations, special arrangements, agreements, or limitations,

(2) Determines that such action is necessary to prevent the likelihood of substantial loss of funds to the Federal Government or to the students at the institution, and

(3) Determines that the likelihood of loss outweighs the importance of following the procedures set forth in this subpart for suspension, limitation, or termination.

(b) The designated ED official begins an emergency action by notifying the institution, by certified mail with return receipt requested, of the action and the basis on which it is taken. The effective date of the action is the date on which the notice is received by the institution.

(c) An emergency action shall not exceed 30 days unless a suspension, limitation, or termination proceeding is begun under this subpart before the expiration of that period. In such case, the period may be extended until the completion of that proceeding, including any appeal to the Secretary.

(d) If a suspension, limitation, or termination proceeding is begun, the Secretary will provide the institution, if it so requests an opportunity to show cause that the emergency action is unwarranted, pending the outcome of that proceeding.

(20 U.S.C. 1094)

§ 668.75 Fine proceedings.

(a) *Scope and consequences.* The Secretary may impose a fine of up to $25,000 on an institution that

(1) Violates any provision of title IV of the Higher Education Act or any regulation or agreement implementing that title; or

(2) Substantially misrepresents the nature of its educational program, its finance charges, and the employability of its graduates.

(b) *Procedures.* The designated ED official begins a fine proceeding, whether or not a suspension, limitation or termination proceeding has begun under § 668.76 or § 668.77 by sending the institution a notice, by certified mail with return receipt requested. This notice must—

(i) Inform the institution of the Secretary's intent to fine the institution and the amount of the fine, cite the consequences of that action, and identify the alleged violations which constitute the basis for the action;

(ii) Specify the proposed effective date of the fine, which shall be at least 20 days from mailing of the notice of intent;

(iii) Inform the institution that the fine will not be effective on the date specified in the notice if the designated ED official receives, at least five days before that date, a written request for a hearing or written material indicating why the fine should not be imposed.

(2) If the institution does not request a hearing but submits written material, the designated ED official, after considering that material, notifies the institution that—

(i) The fine will not be imposed; or

(ii) The fine is imposed as of a specified date, and in a specified amount.

(3) If the institution requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated ED official sets the date and the place. The date is at least 15 days after the designated ED official receives the request.

(4) A presiding officer conducts a hearing on the record.

(5) At the hearing the presiding officer shall consider any written material presented to him or her before the hearing, or any written material or other evidence presented during the course of the hearing.

(6) If the presiding officer concludes that the fine is warranted, he or she issues an initial decision confirming the imposition of a fine against the institution and the amount of the fine.

(c) *Expedited hearings.* With the approval of the presiding officer and the consent of the designated ED official and the institution, any time schedule specified in this section may be shortened.

(20 U.S.C. 1094)

§ 668.76 Suspension proceedings.

(a) *Scope and consequences.* From its effective date, a suspension removes an institution's eligibility for any or all of the title IV student assistance programs covered under this subpart for a period of time not exceeding 60 days unless—

(1) The institution and the designated ED official agree to an extension where the institution has not requested a hearing, or

(2) The designated ED official begins a limitation or termination proceeding under § 668.77.

(b) *Procedures.* (1) The designated ED official begins a suspension proceeding by sending a notice to an institution by certified mail with return receipt requested. The notice must—

(i) Inform the institution of the intent of the Secretary to suspend the institution's eligibility, cite the consequences of that action, and identify the alleged violations which constitute the basis for the action;

(ii) Specify the proposed effective date of the suspension, which shall be at least 20 days after the date of mailing of the notice of intent; and

(iii) Inform the institution that the suspension will not be effective on the date specified in the notice if the designated ED official receives, at least 5 days before that date, a request for a hearing or written material indicating why the suspension should not take place.

(2) If the institution does not request a hearing, but submits written material, the designated ED official, after considering that material, notifies the institution that—

(i) The proposed suspension is dismissed, or

(ii) The suspension is effective as of a specified date.

(3) If the institution on a timely basis requests a hearing, the designated ED official sets a date and place for it. The date will be at least 15 days after the designated ED official receives the request. No suspension takes place until a hearing is held.

(4) A presiding officer conducts a hearing on the record.

(5) At the hearing, the presiding officer shall consider any written material presented to him before the hearing or any material or other evidence presented to him during the course of the hearing.

(6) If, after considering the evidence, the presiding officer concludes that the suspension is warranted, the presiding officer will issue an initial decision that may suspend the eligibility of all or part of the institution.

(7) The Secretary will review the initial decision of the presiding officer and will issue a final decision adopting the initial decision, unless the initial decision is clearly unsupported by the evidence.

(c) Notice of the suspension will be promptly mailed to the institution. The suspension takes effect either upon the date on which the notice is received by the institution or the original proposed effective date stated in the notice of intent, whichever is later.

(d) A suspension shall not exceed 60 days unless a limitation or termination proceeding is begun under this subpart before the expiration of that period. In such case, the period may be extended until the completion of that proceeding, including any appeal to the Secretary.

(20 U.S.C. 1094)

§ 668.77 Limitation or termination proceedings.

(a) *Scope and consequences.* From its effective date, a limitation or termination shall either—

(1) Result in limitations on an institution's eligibility, or

(2) End the eligibility of an institution to participate in any or all title IV student assistance programs covered under this subpart.

(b) *Procedures.* The designated ED official begins a limitation or termination proceeding whether or not a fine or suspension proceeding has begun under § 668.75 or § 668.76, by sending an institution a notice, by certified mail with return receipt requested. This notice must—

(i) Inform the institution of the intent of the Secretary to limit or terminate the institution's eligibility, cite the consequences of that action, and identify the alleged violations which constitute the basis for the action, and in the case of a limitation proceeding, state the limits to be imposed;

(ii) Specify the proposed effective date of the limitation or termination, which shall be at least 20 days after the date of mailing of the notice of intent; and

(iii) Inform the institution that the limitation or termination will not be effective on the date specified in the notice if the designated ED official receives, at least 5 days before that date, a request for a hearing or written material indicating why the limitation or termination should not take place.

(2) If the institution does not request a hearing but submits written material, the designated ED official,

after considering that material, notifies the institution that:

(i) The proposed action is dismissed,

(ii) Limitations are effective as of a specified date, or

(iii) The termination is effective as of a specified date.

(3) If the institution on a timely basis requests a hearing, the designated ED official sets a date and a place for it. The date will be at least 15 days after the designated ED official receives the request. No proposed limitation or termination takes place until after a hearing is held.

(4) A presiding officer conducts the hearing on the record.

(5) At the hearing the presiding officer shall consider any written material presented to him before the hearing, or any material or other evidence presented to him during the course of the hearing.

(6) If, after considering the evidence, the presiding officer concludes that limitation or termination is warranted, the presiding officer will issue an initial decision that may limit or terminate the institution's eligibility in whole or in part. If a termination action is brought against an institution, the presiding officer may issue a decision to impose one or more limitations on an institution rather than terminating its eligibility, if the presiding officer believes the limitation to be more appropriate.

(c) *Expedited hearing.* With the approval of the presiding officer and the mutual consent of the parties, any time schedule specified in this section may be shortened.

(20 U.S.C. 1094)

§ 668.78 Initial and final decision—appeals.

(a)(1) The presiding officer shall issue a written initial decision within 30 days after

(i) The last brief is filed, or

(ii) The last day of the hearing, if the presiding officer does not request the parties to submit briefs.

(2) The presiding officer shall promptly deliver his or her decision to the institution and the designated ED official.

(3) The presiding officer shall base findings of fact only on evidence considered at the hearing and on matters given official notice. If a hearing is conducted by written submissions, findings of fact shall be based on the facts stipulated by the parties.

(b) In a suspension proceeding, the Secretary reviews the presiding officer's initial decision and issues a final decision within 20 days after the initial decision. The Secretary adopts the initial decision unless it is clearly unsupported by the evidence presented at the hearing.

(c) In a fine, limitation or termination proceeding, the presiding officer's initial decision automatically becomes the Secretary's final decision 20 days after it is issued unless, within that 20 day period, the institution or the designated ED official appeals the decision to the Secretary.

(d)(1) Within a period specified by the Secretary, the party that appeals shall submit a brief or written materials to the Secretary explaining why the initial decision of the presiding officer should be overturned or modified.

(2) The appealing party may submit proposed findings of fact or conclusions of law. However, the proposed findings of fact must be supported by:

(i) The evidence introduced into the record at hearing,

(ii) Stipulations of the parties if the hearing consisted of written submissions, or

(iii) Matters that may be judicially noticed.

(3) The opposing party shall respond within the time period specified by the Secretary.

(4) Neither party may introduce new evidence on appeal.

(5) Each party shall provide a copy of its brief to the other party.

(e) The initial decision of the presiding officer imposing a fine or limiting or terminating the eligibility of the institution does not take effect pending the appeal unless the Secretary determines that a stay would provide a serious and adverse effect upon the programs involved.

(f)(1) The Secretary renders a final decision.

(2) In rendering that decision, the Secretary shall consider only evidence introduced into the record at the hear-

ing, stipulations of facts if the hearing consisted of only written submissions, and matters that may be judicially noticed.

(3) The Secretary's decision may affirm, modify or reverse the presiding officer's initial decision, and shall include a statement of the reasons for the decision.

(20 U.S.C. 1094)

§ 668.79 Verification of mailing and receipt dates.

(a) Verification of the Department of Education's mailing dates and receipt dates referred to in this subpart is evidenced by the original receipt from the U.S. Postal Service.

(b) If an institution refuses to accept a notice mailed under this subpart, the Secretary considers the notice as being received on the date that the institution refuses to accept the notice.

(20 U.S.C. 1094)

§ 668.80 Fines.

(a) In determining the amount of a fine, the designated ED official, presiding officer and Secretary shall take into account—

(1)(i) The gravity of the institution's violation or failure to carry out the relevant statute, regulation or agreement, or

(ii) The gravity of its misrepresentations, and

(2) The size of the institution.

(b) Upon the request of the institution, the Secretary may compromise the fine.

(20 U.S.C. 1094)

§ 668.81 Limitation.

A limitation may include, as appropriate to the program in question—

(a) A limit on the number or percentage of students enrolled in an institution who may receive title IV student assistance funds covered under this subpart;

(b) A limit, for a stated period of time, on the percentage of an institution's total receipts from tuition and fees derived from title IV student assistance funds covered under this subpart;

(c) A requirement that an institution obtain a bond, in a specified amount, to assure its ability to meet its financial obligations to students who receive title IV student assistance funds covered under this subpart; or

(d) Such other conditions as may be determined to be reasonable and appropriate.

(20 U.S.C. 1094)

§ 668.82 Termination.

(a) *Effect.* Except as provided in paragraph (b) of this section, a termination—(1) Ends an institution's eligibility for any or all of the title IV student assistance programs;

(2) Prohibits an institution or the Secretary from making or increasing financial aid awards;

(3) Prohibits an institution from making any other new obligations against title IV student assistance funds covered under this subpart; and

(4) Prohibits further commitments of Federal insurance by the Secretary under the GSL or PLUS programs for loans to students to attend that institution, and prohibits further disbursements by an institution which is a lender under the GSL or PLUS programs (whether or not insurance commitments have been issued by the Secretary or a guarantee agency for such disbursements).

(b) *Payment period.* (1) If an institution is terminated during a payment period, any student at that school who has received an award or to whom a commitment has been made before the effective date of the termination may receive payment for that payment period.

(2) For the purposes of this section, the payment period is a semester, trimester, or quarter for institutions using these academic periods. For all other institutions, the payment period is the period from the beginning to the midpoint of the academic year, or from the midpoint to the end of the academic year.

(c) *Commitment.* For the purposes of this section (1) a commitment under the Pell Grant program occurs after a student is enrolled and attending the institution and has submitted a valid student eligibility report to the institution, or to the Secretary if the student is attending an institution which is under the alternate disbursement system, (2) a commitment under the Supplemental Grant, College Work-Study, or National Direct Student Loan Programs occurs when the student is enrolled and attending the institution and has received an award letter from the institution, and (3) a commitment under the GSL or PLUS Programs occurs when the Secretary or a guarantee agency advises the lender that the loan will be insured.

(20 U.S.C. 1094)

§ 668.83 Reimbursements, refunds, and offsets.

(a) The designated ED official, presiding officer, or Secretary may require an institution to take reasonable and appropriate corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(b) The corrective action may include payment of any funds, to the Secretary or to designated recipients, which the institution improperly received, withheld, disbursed, or caused to be disbursed. Corrective action may, for example, relate to (1) with respect to the GSL or PLUS programs—(i) ineligible interest benefits, special allowances or other claims paid by the Secretary, and (ii) discounts, premiums, or excess interest paid in violation of part 682 or 683 of title 34 of the Code of Federal Regulations; and (2) with respect to all title IV student assistance programs covered under this subpart—(i) refunds due to students under the regulations, and (ii) any grants, work-study assistance, or loans made in violation of program regulations.

(c) If any final decision requires an institution to reimburse or make any other payment to the Secretary the Secretary may offset these claims against any benefits or claims due to the institution.

(20 U.S.C. 1094)

§ 668.84 Reinstatement after termination.

(a) An institution whose eligibility for any or all title IV student assistance programs covered under this subpart has been terminated may not file a request for reinstatement of its eligibility before the expiration of 18 months from the effective date of its termination.

(b) After the minimum termination period, the institution may request reinstatement of its eligibility. The request must be in writing and must show that the institution has corrected the violations on which the termination was based and that it meets all qualifications for eligibility.

(c) Not later than 60 days after receipt of the request for reinstatement, the Secretary shall respond to the institution—

(i) Granting its request;

(ii) Denying its request; or

(iii) Granting the request subject to limitations.

(d)(1) If the Secretary denies the institution's request, or allows reinstatement subject to limitation(s), the institution, upon request, will be granted an opportunity to show cause why it should be fully reinstated.

(2) In the event the Secretary's response allows reinstatement subject to limitation, the institution, by requesting a show cause meeting, shall not be deemed to waive its rights to participate in the HEAL program or any or all title IV programs covered under this subpart if it complies with the reinstatement limitations pending the outcome of the meeting.

(20 U.S.C. 1094)

§ 668.85 Removal of limitation.

(a) An institution whose eligibility for any or all title IV student assistance programs covered under this subpart has been limited may not apply for removal of the limitation of its eligibility before the expiration of 12 months from the effective date of the limitation.

(b) After the minimum limitation period, the institution may request removal of the limitation. The request must be in writing and show that the institution has corrected the violations on which the limitation was based.

(c) No later than 60 days after the receipt of the request, the Secretary shall respond to the institution—

(i) Granting its request;

(ii) Denying its request; or

(iii) Granting the request subject to other limitations.

(d) If the Secretary denies the request, or establishes other limitations, the institution upon request will be granted an opportunity to show cause why its eligibility should be fully reinstated.

(e) The institution's request for a show cause meeting shall not be deemed to waive its right to participate in any or all title IV student assistance programs covered under this subpart if it complies with such continuing limitations pending the outcome of the meeting.

(20 U.S.C. 1094)

APPENDIX A—[RESERVED]

APPENDIX B—STANDARDS FOR AUDIT OF GOVERNMENTAL ORGANIZATIONS, PROGRAMS, ACTIVITIES, AND FUNCTIONS (GAO)

Part III Chapter 3—Independence

(a) The Third general standard for governmental auditing is: In matters relating to the audit work, the audit organization and the individual auditors shall maintain an independent attitude.

(b) This standard places upon the auditor and the audit organization the responsibility for maintaining sufficient independence so that their opinions, conclusions, judgments, and recommendations will be impartial. If the auditor is not sufficiently independent to produce unbiased opinions, conclusions, and judgments, he should state in a prominent place in the audit report his relationship with the organization or officials being audited.[1]

(c) The auditor should consider not only whether his or her own attitude and beliefs permit him or her to be independent but also whether there is anything about his or her situation which would lead others to question his or her independence. Both situations deserve consideration since it is important not only that the auditor be, in fact, independent and impartial but also that other persons will consider him or her so.

(d) There are three general classes of impairments that the auditor needs to consider; these are personal, external, and organizational impairments. If one or more of these are of such significance as to affect the auditor's ability to perform his or her work and report its results impartially, he or she should decline to perform the audit or indicate in the report that he or she was not fully independent.

Personal Impairments

There are some circumstances in which an auditor cannot be impartial because of his or her views or his or her personal situation. These circumstances might include:

1. Relationships of an official, professional, and/or personal nature that might cause the auditor to limit the extent or character of the inquiry, to limit disclosure, or to weaken his or her findings in any way.
2. Preconceived ideas about the objectives or quality of a particular operation or personal likes or dislikes of individuals, groups, or objectives of a particular program.
3. Previous involvement in a decisionmaking or management capacity in the operations of the governmental entity or program being audited.
4. Biases and prejudices, including those induced by political or social convictions, which result from employment in or loyalty to a particular group, entity, or level of government.
5. Actual or potential restrictive influence when the auditor performs preaudit work and subsequently performs a post audit.
6. Financial interest, direct or indirect, in an organization or facility which is benefiting from the audited programs.

External Impairments

External factors can restrict the audit or impinge on the auditor's ability to form independent and objective opinions and conclusions. For example, under the following conditions either the audit itself could be adversely affected or the auditor would not have complete freedom to make an independent judgment.[2]

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[1] If the auditor is not fully indpendent because he or she is an employee of the audited entity, it will be adequate disclosure to so indicate. If the auditor is a practicing certified public accountant, his or her conduct should be governed by the AICPA "Statements on Auditing Procedure."

1. Interference or other influence that improperly or imprudently eliminates, restricts, or modifies the scope or character of the audit.

2. Interference with the selection or application of audit procedures of the selection of activities to be examined.

3. Denial of access to such sources of information as books, records, and supporting documents or denial of opportunity to obtain explanations by officials and employees of the governmental organization, program, or activity under audit.

4. Interference in the assignment of personnel to the audit task.

5. Retaliatory restrictions placed on funds or other resources dedicated to the audit operation.

6. Activity to overrule or significantly influence the auditors judgment as to the appropriate content of the audit report.

7. Influences that place the auditor's continued employment in jeopardy for reasons other than competency or the need for audit services.

8. Unreasonable restriction on the time allowed to competently complete an audit assignment.

Organizational Impairments

(a) The auditor's independence can be affected by his or her place within the organizational structure of governments. Auditors employed by Federal, State, or local government units may be subject to policy direction from superiors who are involved either directly or indirectly in the government management process. To achieve maximum independence such auditors and the audit organization itself not only should report to the highest practicable echelon within their government but should be organizationally located outside the line-management function of the entity under audit.

(b) These auditors should also be sufficiently removed from political pressures to ensure that they can conduct their auditing objectively and can report their conclusions completely without fear of censure. Whenever feasible they should be under a system which will place decisions on compensation, training, job tenure, and advancement on a merit basis.

(c) When independent public accountants or other independent professionals are engaged to perform work that includes inquiries into compliance with applicable laws and regulations, efficiency and economy of operations, or achievement of program results, they should be engaged by someone other than the officials responsible for the direction of the effort being audited. This practice removes the pressure that may result if the auditor must criticize the performance of those by whom he or she was engaged. To remove this obstacle to independence, governments should arrange to have auditors engaged by officials not directly involved in operations to be audited.

APPENDIX C—APPENDIX I, STANDARDS FOR AUDIT OF GOVERNMENTAL ORGANIZATIONS, PROGRAMS, ACTIVITIES, AND FUNCTIONS (GAO)

Qualifications of Independent Auditors Engaged by Governmental Organizations

(a) When outside auditors are engaged for assignments requiring the expression of an opinion on financial reports of governmental organizations, only fully qualified public accountants should be employed. The type of qualifications, as stated by the Comptroller General, deemed necessary for financial audits of governmental organizations and programs is quoted below:

"Such audits shall be conducted * * * by independent certified public accountants or by independent licensed public accountants, licensed on or before December 31, 1970, who are certified or licensed by a regulatory authority of a State or other political subdivision of the United States: Except that independent public accountants licensed to practice by such regulatory authority after December 31, 1970, and persons who although not so certified or licensed, meet, in the opinion of the Secretary, standards of education and experience representative of the highest prescribed by the licensing authorities of the several States which provide for the continuing licensing of public accountants and which are prescribed by the Secretary in appropriate regulations may perform such audits until December 31, 1975; Provided, That if the Secretary deems it necessary in the public interest, he may prescribe by regulations higher standard than those required for the practice of public accountancy by the regulatory authorities of the States."[1]

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[2] Some of these situations may constitute justifiable limitations on the scope of the work. In such cases the limitation should be identified in the auditor's report.

(b) The standards for examination and evaluation require consideration of applicable laws and regulations in the auditor's examination. The standards for reporting require a statement in the auditor's report regarding any significant instances of noncompliance disclosed by his or her examination and evaluation work. What is to be included in this statement requires judgment. Significant instances of noncompliance, even those not resulting in legal liability to the audited entity, should be included. Minor procedural noncompliance need not be disclosed.

(c) Although the reporting standard is generally on an exception basis—that only noncompliance need be reported—it should be recognized that governmental entities often want positive statements regarding whether or not the auditor's tests disclosed instances of noncompliance. This is particularly true in grant programs where authorizing agencies frequently want assurance in the auditor's report that this matter has been considered. For such audits, auditors should obtain an understanding with the authorizing agency as to the extent to which such positive comments on compliance are desired. When coordinated audits are involved, the audit program should specify the extent of comments that the auditor is to make regarding compliance.

(d) When noncompliance is reported, the auditor should place the findings in proper perspective. The extent of instances of noncompliance should be related to the number of cases examined to provide the reader with a basis for judging the prevalence of noncompliance.

PART 674—NATIONAL DIRECT STUDENT LOAN PROGRAM

Note: An asterisk (*) indicates provisions that are common to Part 674, 675, and 676. The use of asterisks will assure participating institutions that a provision of one regulation is identical to the corresponding provisions in the other two.

Subpart A—General Provisions

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674.5 Application.
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674.9 Student eligibility.
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674.16 Making and disbursing loans.
*674.17 Federal interest in allocated funds—Transfer of loan fund.
674.18 Use of funds.
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674.21 Deposit of institutional capital contributions into Fund.

Subpart B—Terms of Loans

674.31 Defense and Direct loan maximums for students.
674.32 Promissory note—loan repayment.
674.33 Minimum repayment rates.

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[1] Letter (B-148144, September 15, 1970) from the Comptroller General to the heads of Federal departments and agencies. The reference to "Secretary" means the head of the department or agency.

Sec.
674.34 Deferment of repayment—Defense or Direct loans made on or before September 30, 1980.
674.34a Deferment of repayment—Direct loans made on or after October 1, 1980.
674.35 Postponement of loan repayments in anticipation of cancellation.
674.36 Treatment of loan repayments where cancellation, loan repayments, and minimum monthly repayments apply.

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Subpart D—Loan Cancellation

674.51 Special definitions.
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APPENDIX A—ALLOTMENT OF FUNDS TO STATES FOR FISCAL YEAR 1972

APPENDIX B—SAMPLE PROMISSORY NOTE

APPENDIX C—EXAMPLES FOR COMPUTING PENALTY CHARGES—6 MONTHS

APPENDIX D—[RESERVED]

AUTHORITY: Title IV, Part E of the Higher Education Act of 1965, as amended (20 U.S.C. 1087aa-1087ii), and Title II of the National Defense Education Act of 1958, as amended, (20 U.S.C. 421-429), unless otherwise noted.

SOURCE: 46 FR 5241, Jan. 19, 1981, unless otherwise noted.

Subpart A—General Provisions

§ 674.1 Purpose and identification of common provisions.

(a) The National Direct Student Loan Program (NDSL) provides low-interest loans in institutions of higher education to help financially needy students pay their educational costs.

(b)(1) The National Direct Student Loan Program authorized by Title IV-E of the Higher Education Act of 1965 is a continuation of the National Defense Student Loan Program authorized by Title II of the National Defense Education Act of 1958. All rights, privileges, duties, functions, and obligations existing under Title II before the enactment of Title IV-E continue to exist.

(2) The Secretary considers any student loan fund established under Title II to have been established under Title IV-E. The assets of an institution's student loan fund established under Title II are assets of the institution's student loan fund established under Title IV-E.

*(c) Provisions in these regulations that are common to all campus-based regulations are identified with an asterisk.

(20 U.S.C. 1087aa-1087ii, Pub. L. 92-318, sec. 137(d)(1))

§ 674.2 Definitions.

The following definitions are set forth in Subpart A of the Student Assistance General Provisions, 34 CFR Part 668:

Ability to Benefit;

Institution of higher education (including Public or Private nonprofit institution of higher education, proprietary institution of higher education, and postsecondary vocational institution);

One-year training program;

Recognized equivalent of a high school diploma; and

Six-month training program.

Other definitions used in this part are:

**Academic year:* A period of time in which a full-time student is expected to complete—

(a) The equivalent of at least 2 semesters, 2 trimesters, or 3 quarters at an institution using credit hours; or

(b) At least 900 clock hours of training for each program at an institution using clock hours.

Act: Title IV-E of the Higher Education Act of 1965 (HEA).

**Award year:* The period of time between July 1 of one year and June 30 of the following year.

**Campus Based Programs:* (a) The National Direct Student Loan Program (NDSL-34 CFR Part 674);

(b) The College Work-Study Program (CWS-34 CFR Part 675); and

(c) The Supplemental Educational Opportunity Grant Program (SEOG-34 CFR Part 676).

**Clock Hour:* The equivalent of—

(a) A 50 to 60 minute class, lecture, or recitation; or

(b) A 50 to 60 minute faculty supervised laboratory, shop training, or internship.

College Work-Study Program (CWS): The part-time employment program for students authorized by Title IV-C of the HEA.

(42 U.S.C. 2751-2756b)

(20 U.S.C. 1141(f))

Default or in default: (a) The failure of a borrower to—

(1) Make an installment payment when due; or

(2) Comply with other terms of the promissory note.

(b) Notwithstanding paragraph (a), if the institution reasonably concludes from written contacts with the borrower that he or she intends to repay the loan, the borrower is not considered in default.

(c) The Secretary considers a loan discharged in bankruptcy not to be in default.

Default rate: Represented as a fraction:

$$\frac{\text{Defaulted principal amount outstanding}}{\text{Matured loans}}$$

Defaulted principal amount outstanding: The total amount borrowed that has reached the repayment stage minus any principal amount repaid or canceled on loans—

(a) Repayable monthly and in default at least 120 days; and

(b) Repayable less frequently and in default at least 180 days.

Defense loan: A loan made before July 1, 1972, under Title II of the National Defense Education Act (20 U.S.C. 421-429).

**Dependent student:* A student who does not qualify as an independent student (see independent student).

Direct loan: A loan made after June 30, 1972, under the Act.

Eligible Program:

A program of eduction or training that—

*(a) Admits as regular students only persons who—

(1) Have a high school diploma;

(2) Have a General Education Development Certificate (GED) or a State certificate received after passing a State authorized examination which the State recognizes as the equivalent of a high school diploma; or

(3) Are beyond the age of compulsory school attendance in the State in which the institution is located, and have the ability to benefit from the education or training offered; and

(b)(1) Leads to a bachelor, associate, graduate, or professional degree;

(2) Is at least a 2 year program that is acceptable for full credit toward a bachelor degree;

(3) Is at least a 1 year program leading to a certificate or degree that prepares a student for gainful employment in a recognized occupation; or

(4) Is, for a proprietary institution or a postsecondary vocational institution, at least a six-month program leading to a certificate or degree which prepares students for gainful employment in a recognized occupation.

**Expected family contribution:* The amount a student and his or her spouse and family are expected to pay toward his or her cost of attendance.

Federal capital contribution: The portion of a Fund allocated to an institution under § 674.4.

**Financial need:* The difference between a student's cost of attendance and his or her expected family contribution.

Fund (National Direct Student Loan Fund): A fund established and maintained according to § 674.8.

Grace period:

(a) For loans made before October 1, 1980, the grace period is a period of nine consecutive months starting from the date the borrower ceases to be at least a half-time student at an institution of higher education;

(b) For loans made on or after October 1, 1980, the grace period is a period of six consecutive months starting from—

(1) The date the borrower ceases to be at least a half-time student at an institution of higher education; or

(2) The date the borrower's deferment period ends if the deferment is one described in § 674.34a (a), (b), or (d).

(c) A borrower does not have to pay interest or principal during a grace period.

Graduate or professional student: A student enrolled in an academic program of study above the baccalaureate level at an institution of higher education, including—

(a) A program leading to a first professional degree if the institution requires at least 3 years of study at the college level for entrance into the program; and

(b) The fifth and later years of any program requiring more than 4 years of study at the college level.

**Guaranteed Student Loan Program (GSL):* The student loan program authorized by Title IV-B of the HEA.

(20 U.S.C. 1071 et seq.)

Half-time graduate or professional student: An enrolled graduate or professional student who is carrying a half-time academic work load as determined by the institution according to its own standards and practices.

**Half-time undergraduate student:* An enrolled undergraduate student who is carrying a half-time academic work load as determined by the institution according to its own standards and practices. However, the institution's half-time standards must equal or exceed the equivalent of the following minimum requirements:

(a) 6 semester hours or 6 quarter hours per academic term in an institution using standard semester, trimester, or quarter systems.

(b) 12 semester hours or 18 quarter hours per academic year for an institution using credit hours to measure progress, but not using a standard semester, trimester, or quarter system; or the prorated equivalent for a program of less than 1 year.

(c) 12 clock hours per week for an institution using clock hours.

(d) 12 hours of preparation per week for a student enrolled in a program of study by correspondence.

Independent student (effective through June 30, 1981):

(a) A student who for 1979 and 1980—

(1) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes by his or her parent(s);

(2) Has not received and will not receive financial assistance of more than $750 in each year from his or her parent(s); and

(3) Has not lived and will not live for more than six weeks in each year in the home of his or her parent(s).

(b) If a student's mother and father are divorced or separated, only one parent will be considered to be the parent of the student for purposes of applying the criteria in paragraph (a)(2) of this section. To determine that parent—

(1) Choose the parent with whom the student resided for the greater portion of the 12 month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(2) If the preceding criterion does not apply, choose the parent who provided the greater portion of the student's support for the 12 month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(3) If neither of the preceding criteria apply, choose the parent who provided the greater support for the period commencing January 1 of the calendar year which immediately precedes the first calendar year of the award period and ending 12 months prior to the date of application to have an expected family contribution determined under an approved need analysis system.

(c) If either of the parents have died, the institution shall consider only the surviving parent as the parent for purposes of applying the criteria in paragraph (a)(2) of this section. If both parents have died, the institution shall not consider either parent.

(20 U.S.C. 1087 aa-ff; 20 U.S.C. 1087dd(e).)

**Independent student (effective July 1, 1981 through June 30, 1982):*

(a) A student who for 1980 and 1981—

(1) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes by his or her parent(s);

(2) Has not received and will not receive financial assistance of more than $1,000 in each year from his or her parent(s); and

(3) Has not lived and will not live for more than six weeks in each year in the home of his or her parent(s).

(b) If a student's mother and father are divorced or separated only one parent will be considered to be the parent of the student for purposes of applying the criteria in paragraph (a) of this section. To determine that parent—

(1) Choose the parent with whom the student resided for the greater portion of the 12-month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(2) If the preceding criterion does not apply, choose the parent who provided the greater portion of the student's support for the 12-month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(3) If neither of the preceding criteria apply, choose the parent who provided the greater support for the period commencing January 1 of the calendar year which immediately precedes the first calendar year of the award period and ending 12 months prior to the date of application to have an expected family contribution determined under an approved need analysis system.

(c) If either of the parents have died, the institution shall consider only the surviving parent as the parent of the student. If both parents have died the institution shall not consider either parent.

**Independent student (effective July 1, 1982):*

(a) A single student who for 1981 and 1982—

(1) Has not lived and will not live for more than six weeks in either year in the home of his or her parent(s);

(2) Has not been claimed and will not be claimed as a dependent for Federal income tax purposes by his or her parent(s); and

(3) Has not received and will not receive financial assistance of more than $750 in either year from his or her parent(s); or

(b) A married student who for 1982—

(1) Has not lived and will not live for more than six weeks in the home of his or her parent(s);

(2) Has not been claimed and will not be claimed as a dependent for Federal income tax purposes by his or her parent(s); and

(3) Has not received and will not receive financial assistance of more than $750 from his or her parent(s).

(c) If a student's mother and father are divorced or separated, only one parent will be considered to be the parent of the student for purposes of applying the criteria in paragraphs (a) and (b) of this section. To determine that parent—

(1) Choose the parent with whom the student resided for the greater portion of the 12 month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(2) If the preceding criterion does not apply, choose the parent who provided the greater portion of the student's support for the 12 month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(3) If neither of the preceding criteria apply, choose the parent who provided the greater support for the period commencing January 1 of the calendar year which immediately precedes the first calendar year of the award period and ending 12 months prior to the date of application to have an expected family contribution determined under an approved need analysis system.

(d) If either of the parents have died, the institution shall consider only the surviving parent as the parent for purposes of applying the criteria in paragraphs (a) and (b) of this section. If both parents have died, the institution shall not consider either parent.

Institutional capital contribution: The portion of a Fund contributed by the institution under § 674.8(a)(2).

**Legal guardian:* An individual appointed by a court to be a legal guardian of a person and who is specifically required by the court to use his or her financial resources to support that person.

Matured loans: The total principal amount of all loans made minus the principal amount of loans to students who are—

(a) Enrolled as at least half-time students in institutions of higher education; or

(b) Still in their first grace period.

**National of the United States:* A citizen of the United States or a noncitizen who owes permanent allegiance to the United States.

(8 U.S.C. 1101(a)(22))

**Parent:* Parent means the student's mother, father, or legal guardian. An adoptive parent is considered to be the student's mother or father.

(20 U.S.C. 1141(c))

**Parent Loans for Undergraduate Students Program (PLUS):* The Parent Loan Program authorized by Title IV-B of the HEA.

**Payment period:* A semester, trimester, or quarter. For an institution not using those academic periods, it is the period between the beginning and the midpoint or between the midpoint and the end of an academic year.

**Pell Grant Program:* The grant program, formerly known as the Basic Educational Opportunity Grant Program, authorized by Title IV-A-1 of the HEA.

**Regular student:* A person who is enrolled or accepted for enrollment enrolls in an eligible program at an institution of higher education for the purpose of obtaining a degree or certificate.

**Secretary:* The Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

**State:* The States of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(20 U.S.C. 1141(b); 20 U.S.C. 1088(a))

**State Student Incentive Grant Program (SSIG):* The program authorized by Title IV-A-3 of the HEA.

(20 U.S.C. 1070c-et seq.)

Supplemental Educational Opportunity Grant Program (SEOG): The grant program authorized by Title IV-A-2 of the HEA.

(20 U.S.C. 1070b et seq.)

(20 U.S.C. 1087aa-1087ii unless otherwise noted)

[46 FR 5241, Jan. 19, 1981, as amended at 46 FR 6324, Jan. 21, 1981; 47 FR 743, Jan. 6, 1982]

§ 674.3 Apportionment and reapportionment of Federal capital contributions to States.

(a) *Apportionment.* (1) The Secretary apportions 90% of appropriated funds for Federal capital contributions according to section 462(a)(1) of the Act. (This section requires the Secretary to apportion additional amounts to each State to make that State's apportionment equal to its allotment for fiscal year 1972. The 1972 allotments are shown in Appendix A.)

(2) The Secretary apportions the remaining funds so that each institution in each State receives the Federal capital contribution computed under §§ 674.6, 674.6a or 674.7.

(b) *Reapportionment.* (1) The Secretary reapportions the amount of a State's apportionment that exceeds the amount of approved requests of institutions in that State.

(2) The Secretary reapportions those funds among the remaining States according to institutional need for Federal capital contributions as computed under §§ 674.6, 674.6a or 674.7.

(20 U.S.C. 1087bb)

§ 674.4 Allocation, reallocation, and payment to institutions.

(a) *Allocation.* (1) The Secretary distributes Federal capital contributions authorized by section 461 of the Act according to §§ 674.6, 674.6a, and 674.7.

(b) *Reallocation.* (1)(i) If an institution anticipates not lending all its allocated funds by the end of an award year, it must specify the anticipated unused amount to the Secretary, who reduces the institution's allocation accordingly.

(ii) Other institutions may apply for those funds on the form and at the time specified by the Secretary.

(iii) The Secretary distributes those funds to applicant institutions in accordance with paragraph (b)(2) of this section.

(2)(i) If the funds that become available under paragraph (b)(1) of this section come from the State's initial allotment under § 674.3(a)(1), the Secretary reallocates those funds proportionately to other institutions in that State. The Secretary reapportions those funds that are not needed to maintain the State's initial allotment, and any funds that do not come from that initial allotment, in accordance with paragraphs (b)(2) (ii), (iii) and (iv) of this section.

(ii) The Secretary increases awards to institutions whose students have suffered financial hardships as a result of natural disasters within the preceding 12 months.

(iii) If any funds remain, the Secretary then increases the Federal capital contribution to institutions whose current level of expenditure (LED) is less than their national fair shares determined under § 674.6. The Secretary calculates each applicant's increase as follows:

Institution's remaining LED shortfall/remaining LED shortfall of all applicants for reallocation × remaining FCC available for reallocation

(An institution's remaining level of expenditure shortfall is the difference between its national fair share (see § 674.6(g)(4)) and its approved level of expenditure calculated in § 674.6 and this section through paragraph (b)(2)(ii).)

(iv) If any funds still remain, the Secretary reallocates the funds in a manner that best carries out the purposes of this part.

(c) *Payments to institutions.* The Secretary allocates new Federal capital contributions for a specific period of time. The Secretary pays funds to an institution in advance or by reimbursement. The Secretary bases the amount to be paid on periodic fiscal reports.

(20 U.S.C. 1087bb)

§ 674.5 Application.

(a) To participate in the NDSL program, an institution must file an application with the Secretary for an approved level of expenditure before an annually established closing date. In the application the institution may request—

(1) A Federal capital contribution;

(2) Authority to spend the income of its Fund (that income includes repayments made by borrowers and interest earned on Fund cash); or

(3) Both (1) and (2).

(b) The application must be on a form approved by the Secretary and contain information needed to determine the institution's—

(1) Level of expenditure; and

(2) Federal capital contribution.

(20 U.S.C. 1087bb)

§ 674.6 Funding procedure.

(a) *General.* (1) Each institution applying for NDSL funds receives an approved level of expenditure in the following three stages—

(i) A "conditional guarantee";

(ii) A State increase based on its "fair share" of the State apportionment; and

(iii) A national increase based on its "fair share" of the national appropriation.

(2) The terms "conditional guarantee" and "fair share" refer only to the level of expenditure. The Secretary computes the Federal capital contribution (FCC) according to § 674.6a.

(3) Definitions—As used in this section—

(i) "Base year" means the 12-month period ending on the June 30 preceding the closing date for filing an NDSL application for a level of expenditure;

(ii) "Base year level of expenditure" means the amount of loans made in the base year plus the amount the institution claimed for administrative expenses in that year.

(iii) "Current year" means the 12-month period ending on the June 30 immediately following the closing date for filing the application; and

(iv) "Utilization rate" means:

an institution's base year level of expenditure/its NDSL funds available in the base year

NDSL funds available in the base year include—

(A) FCC awards in the base year;

(B) The matching institutional capital contribution;

(C) Loan repayments received in the base year;

(D) Reimbursements for Direct loan cancellations; and

(E) Cash on hand as of June 30 of the year preceding the base year.

(b) *Conditional guarantee.* The Secretary computes a conditional guarantee of the level of expenditure in the following way:

(1) An institution that participated in the NDSL program in the base year receives a conditional guarantee equal to the greater of 90 percent of its—

(i) Base year level of expenditure; or

(ii) Current year funding level multiplied by its utilization rate.

(2) An institution's "current year funding level" includes—

(i) The FCC awarded for the current year;

(ii) The matching institutional capital contributions;

(iii) 110 percent of base year loan repayments;

(iv) Reimbursements for Direct loan cancellations; and

(v) Cash on hand as of June 30 of the base year.

(3) An institution applying to participate in the NDSL program for the first time receives a conditional guarantee equal to the greater of—

(i) $5,000; or

(ii) 90 percent of the average NDSL base year expenditure per student in eligible institutions offering comparable programs of instruction, multiplied by the applicant institution's base year enrollment.

(4) An institution applying to participate in the NDSL program for the second time receives a conditional guarantee equal to the greatest of—

(i) $5,000;

(ii) 90 percent of the average NDSL base year expenditure per student in eligible institutions offering comparable programs of instruction, multiplied by the applicant institution's base year enrollment; or

(iii) 90 percent of its current year funding level.

(c) *Self-help need of an institution.* (1) The Secretary allocates additional funds to an institution on the basis of calculations made under paragraph (f) (State increase) and paragraph (g) (National increase). These calculations are based in part on the institution's self-help need. Self-help need is the need for funds from work and loan sources. The institution's self-help need is the sum of the self-help need of its eligible graduate students and the self-help need of its eligible undergraduate students.

(2) The Secretary calculates the self-help need of an institution's eligible graduate students in accordance with paragraph (d) and the self-help need of its eligible undergraduate students in accordance with paragraph (e).

(3) As used in paragraphs (d) and (e):

(i) *Average cost of attendance* means the attendance costs for undergraduate and graduate students. These costs include tuition, [illegible], standard living expenses, books, and supplies. (The institution reports its total tuition and fee revenues, and the Secretary uses this amount to determine the average cost of attendance.)

(ii) *Eligible students* means for award year 1981-82 students who—

(A) Were enrolled as regular students in good standing on at least a half-time basis in an eligible program during the base year;

(B) Met program regulation requirements for citizenship or residency in the United States for the base year; and

(C) Applied for financial assistance for the base year, and for whom the institution has on file taxable and non-taxable income data and all the other information necessary to perform a needs analysis using a methodology approved by the Secretary.

(d) *Self-help need of eligible graduate students.* To determine the self-help need of an institution's eligible graduate students, the Secretary—

(1) Establishes various income categories for dependent and independent graduate students;

(2) Establishes an expected family contribution (EFC) for each income

category of dependent and independent graduate students, using a need analysis method approved under § 674.13;

(3) Determines the average cost of attendance for all graduate students;

(4) Subtracts from the average cost of attendance for all graduate students, the computed EFC for each income category of dependent students and each income category of independent students. However, the average cost of attendance minus the EFC for any income category may not be less than zero;

(5) Multiplies those amounts by the number of eligible students in each category;

(6) Adds the amounts obtained for each income category of dependent students and each income category of independent students; and

(7) Totals those two amounts.

(e) *Self-help need of eligible undergraduate students.* To determine the self-help need of an institution's eligible undergraduate students, the Secretary—

(1) Establishes various income categories for dependent and independent undergraduate students;

(2) Establishes an EFC for each income category of dependent and independent undergraduate students, using a need analysis method approved under § 674.13;

(3) Computes 25 percent of the average cost of attendance for all undergraduate students;

(4) Multiplies the number of eligible dependent students in each income category by the lesser of—

(i) 25 percent of the average cost of education for all undergraduate students; or

(ii) The average cost of attendance for all undergraduate students minus the EFC determined under paragraph (e)(2) of this section for that income category. However, the average cost of attendance minus the EFC may not be less than zero;

(5) Adds the amounts obtained for each income category of dependent students;

(6) Multiplies the number of eligible independent students in each income category by the lesser of—

(i) 25 percent of the average cost of attendance of all undergraduate students; or

(ii) The average cost of attendance for all undergraduate students minus the EFC determined under paragraph (e)(2) of this section for that income category. However, the average cost of attendance minus the EFC may not be less than zero;

(7) Adds the amounts obtained for each income category of independent students; and

(8) Adds the amounts obtained under paragraphs (e)(5) and (7) of this section.

(f) *State increase.* (1) In any year the Secretary increases the level of expenditure of institutions in a State ("State increase"), thereby increasing the FCC going to those institutions, if the combined FCC's resulting from conditional guarantees of all institutions in that State are less than the State apportionment under § 674.3(a)(1). However, no institution receives a State increase if it does not qualify for FCC under § 674.6a.

(2) The Secretary calculates an institution's State increase according to the following formula:

Institution's State increase = its State shortfall/State shortfalls of all institutions in the State × FCC available for State shortfall × 1.11

(3) As used in the formula in subparagraph (2)—

(i) "FCC available for State shortfall" means the State apportionment minus the FCC used for conditional guarantees.

(ii) "Institution's State shortfall" means the difference between an institution's conditional guarantee and its State fair share determined in paragraph (f)(4) of this section.

(4) The Secretary determines an institution's State fair share according to the following formula:

Institution's State fair share = its self-help need/self-help need of all institutions in the State applying for NDSL funds × total State NDSL funds

(5) As used in the formula in paragraph (f)(4) of this section "total State NDSL funds" means the sum of—

(i) The State apportionment of FCC and the matching institutional capital contribution;

(ii) 121 percent of loan repayments in the base year received by institutions in the State; and

(iii) Reimbursement for Direct loan cancellations in the base year received by institutions in the State.

(g) *National increase.* (1) For any year the Secretary will further increase the level of expenditure of institutions ("national increase"), thereby increasing the FCC going to those institutions, if the sum of the conditional guarantees and State increases awarded to institutions is less than the total NDSL funds for that year (see paragraph (g)(5) of this section). However, no institution receives a national increase if it does not qualify for FCC under § 674.6a.

(2) The Secretary calculates an institution's national increase according to the following formula—

Institution's national increase=its national shortfall/national shortfall of all institutions×NDSL funds available for national shortfall

(3) As used in the formula in paragraph (g)(2) of this section—

(i) "NDSL funds available for national shortfall" is calculated by—

(A) Adding the conditional guarantees and State increases for all institutions; and

(B) Subtracting that sum from total NDSL funds; and

(ii) An institution's "national shortfall" is calculated by subtracting from its "national fair share" its conditional guarantee and State increase.

(4) The Secretary calculates an institution's "national fair share" according to the following formula—

Institution's national fair share=its self-help need/self-help need of all institutions applying for NDSL funds×total NDSL funds

(5) As used in paragraphs (g) (1), (3), and (4) of this section "total NDSL funds" is calculated by adding—

(i) The appropriation for FCC plus the matching institutional capital contribution;

(ii) 121 percent of loan repayments in the base year; and

(iii) Reimbursements for Direct loan cancellations in the base year.

(h) No institution may receive a higher level of expenditure than it requests.

(20 U.S.C. 1087bb)

The following charts show the income categories and calculations for eligible graduate students and for eligible undergraduate students:

DETERMINATION OF SELF-HELP NEED FOR ELIGIBLE DEPENDENT GRADUATE STUDENTS

1—Income	2—EFC	3—Average cost	4—Average cost less EFC	5—Number of eligible students	6—Self-help need column 4 times column 5
0 to $2,999					
$3,000 to $5,999					
$6,000 to $8,999					
$9,000 to $11,999					
$12,000 to $14,999					
$15,000 to $17,999					
$18,000 to $20,999					
$21,000 to $23,999					
$24,000 to $26,999					
$27,000 to $29,999					
$30,000 to $32,999					
$33,000 to $35,999					
$36,000 to $38,999					
$39,000 to $41,999					
$42,000 to $44,999					
$45,000 and over					
7 Total self-help need for dependent graduate students					$

BEST DOCUMENT AVAILABLE

DETERMINATION OF SELF-HELP NEED FOR ELIGIBLE DEPENDENT UNDERGRADUATE STUDENTS

1—Income	2—EFC	3—25 percent times average cost	4—Average cost less EFC	5—Number of eligible students	6—Need: Lesser of column 3 times column 5 or column 4 times column 5
0 to $2,999					
$3,000 to $5,999					
$6,000 to $8,999					
$9,000 to $11,999					
$12,000 to $14,999					
$15,000 to $17,999					
$18,000 to $20,999					
$21,000 to $23,999					
$24,000 to $26,999					
$27,000 to $29,999					
$30,000 to $32,999					
$33,000 to $35,999					
$36,000 to $38,999					
$39,000 to $41,999					
$42,000 to $44,999					
$45,000 and over					
7 Total self-help need for dependent undergraduate students					$

DETERMINATION OF SELF-HELP NEED FOR ELIGIBLE INDEPENDENT GRADUATE STUDENTS

1—Income	2—EFC	3—Average cost	4—Average cost less EFC	5—Number of eligible students	6—Self-help need column 4 times column 5
0 to $999					
$1,000 to $1,999					
$2,000 to $2,999					
$3,000 to $3,999					
$4,000 to $4,999					
$5,000 to $5,999					
$6,000 to $6,999					
$7,000 to $7,999					
$8,000 to $8,999					
$9,000 to $9,999					
$10,000 to $10,999					
$11,000 to $11,999					
$12,000 to $12,999					
$13,000 to $13,999					
$14,000 to $14,999					
$15,000 and over					
7 Total self-help need for independent graduate students					$

SUMMARY

1 Total self-help need for dependent graduate students	$
2 Total self-help need for independent graduate students	$
3 Total self-help need for all graduate students (1 plus 2)	$

BEST DOCUMENT AVAILABLE

DETERMINATION OF SELF-HELP NEED FOR ELIGIBLE INDEPENDENT UNDERGRADUATE STUDENTS

1—Income	2—EFC	3—25 percent times average cost	4—Average cost less EFC	5—Number of eligible students	6—Need: Lesser of column 3 times column 5 or column 4 times column 5
0 to $999					
$1,000 to $1,999					
$2,000 to $2,999					
$3,000 to $3,999					
$4,000 to $4,999					
$5,000 to $5,999					
$6,000 to $6,999					
$7,000 to $7,999					
$8,000 to $8,999					
$9,000 to $9,999					
$10,000 to $10,999					
$11,000 to $11,999					
$12,000 to $12,999					
$13,000 to $13,999					
$14,000 to $14,999					
$15,000 and over					
7 Total self-help need for independent undergraduate students					$

SUMMARY

1 Total self-help need for dependent undergraduate students	$
2 Total self-help need for independent undergraduate students	$
3 Total self-help need for all graduate students (1 plus 2)	$

§ 674.6a Funding procedure—Federal capital contributions (FCC).

(a) For any year, an institution receives Federal capital contribution if its default rate—

(1) Is 10 percent or less;

(2) Is more than 10 percent, but has declined by at least 25 percent during the base year; or

(3) Is more than 10 percent but the institution demonstrates that it exercised due diligence according to the provisions of Subpart C during the base year and is currently exercising due diligence.

(b) To determine an institution's FCC the Secretary—

(1) Adds the institution's conditional guarantee, State increase, and national increase;

(2) Subtracts from the sum obtained in paragraph (b)(1) of this section, loan repayments and reimbursements for Direct loan cancellations received in the base year; and

(3) Multiplies the remainder obtained in paragraph (b)(2) of this section by 90 percent.

(c) For purposes of paragraph (b)(2) of this section, loan repayments equal 121 percent of the amount collected in the base year.

(d) The definition of default rate is set forth in § 674.2. However, for purposes of this section, the Secretary excludes—

(1) Notes referred or assigned to the Secretary on or before September 15, 1979 if the institution received either a notification of acceptance or a receipt from the Department;

(2) Notes assigned to the United States in the base year and accepted by the United States; and

(3) Notes that have been in default but on which borrowers have made satisfactory arrangements to resume payment.

(e) No institution may receive more Federal capital contribution than it requested.

(20 U.S.C. 1087bb)

§ 674.7 Application review—approval of request.

(a) An institution may request a review of its computed level of expenditure or its Federal capital contribution.

BEST DOCUMENT AVAILABLE

(b) A National Review Panel appointed by the Secretary reviews each institution's request. The panel consists of student financial aid administrators and Education Department personnel.

(c) In establishing an institution's level of expenditure and Federal capital contribution, the Secretary considers the panel's recommendations and its reasons for the recommendations.

(d) The Secretary establishes an approved level of expenditure and Federal capital contribution based on procedures in § 674.6 and the review panel's recommendations.

(20 U.S.C. 1087bb)

§ 674.8 Institutional agreement.

To participate in the NDSL program, an institution must enter into an agreement with the Secretary. The agreement provides that the institution will use the funds it receives solely for the purposes specified in this part and will administer the program in accordance with the Act, this part and the Student Assistance General Provisions, 34 CFR Part 668. The agreement further provides that—

(a) The institution will establish and maintain a Student Loan Fund (Fund).

It must deposit into the Fund—

(1) Federal capital contributions appropriated under section 461 of the Act;

(2) Institutional capital contributions equal to at least one-ninth of the Federal contributions described in paragraph (a)(1) of this section;

(3) Funds provided by the Secretary under section 468 of the Act;

(4) Principal and interest collected on student loans made from the Fund, except those amounts collected on loans made with funds described in paragraph (a)(3) of this section;

(5) Payments to the institution as the result of direct loan cancellations under section 465(b) of the Act;

(6) Penalty charges collected under § 674.32(f);

(7) Any other Fund earnings including interest earned on those funds; and

(8) Any short term, no interest loans it makes to the fund in anticipation of collections.

(b) The institution must use the money in the Fund only for—

(1) Making National Direct Student Loans to students;

(2) Administrative expenses as provided for in § 674.18(b)

(3) Capital distributions provided for in section 468 of the Act;

(4) Capital distributions provided for in section 469 of the Act;

(5) Litigation costs;

(6) Other collection costs, agreed to by the Secretary in connection with the collection of principal, interest, and penalty charges on a loan made from the Fund (see "Other collection costs" § 674.47); and

(7) Repayment of the short term, no interest loans made to the Fund by the institution in anticipation of collections;

(c)(1) If the institution services and collects loans made to students from funds provided under section 468 of the Act, it shall turn over to the Secretary any repayments of principal and interest it receives along with the penalty charges it collects.

(2) The institution may subtract from the amount it turns over to the Secretary any litigation costs and any "other collection costs" permitted under § 674.47.

(d) If the institution does not service and collect loans made with the funds provided for in section 468 of the Act, the institution will assign the loans made with such funds to the Secretary.

(e) Where a promissory note has been in default at least 2 years despite due diligence, the institution may assign its rights to the United States without recompense, and any amount collected on the loan will be deposited in the general fund of the Treasury;

(f) The institution must submit a report to the Secretary at least twice a year that shows the total number of loans made from its Fund that are in default—

(1) 120 days for loans repayable in monthly installments; or

(2) 180 days for loans repayable in less frequent installments; and

(g) The Secretary will provide to the institution any information with respect to the names and addresses of borrowers or other relevant information which is available to the Secretary.

(20 U.S.C. 1087cc, 1087dd, 1094)

§ 674.9 Student eligibility.

(a) *Eligibility.* A student is eligible to receive an NDSL at an institution of higher education if the student—

*(1) Is a regular student;

(2) Is enrolled or accepted for enrollment in an eligible program as an undergraduate, graduate or professional student at that institution;

*(3) (i) Is a U.S. citizen or National;

(ii) Is a permanent resident of the U.S.;

(iii) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands;

*(4) Has financial need;

*(5) Is maintaining satisfactory progress in the course of study he or she is pursuing according to the standards and practices of that institution;

(6) Does not owe a refund on a Pell Grant, Supplemental Grant, or State Student Incentive Grant received to meet the cost of attending that institution; and

*(7) Is not in default on any National Defense/Direct Student Loan, Guaranteed Student Loan, or Parent Loans for Undergraduate Students (PLUS), received to meet the cost of attending that institution.

*(b) *Member of a religious order—financial need.* The Secretary considers that a member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education has no financial need if that religious order—

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3)(i) Directs the member to pursue the coure of study; or

(ii) Provides subsistence support to its members.

(c) *Selection.* (1) An institution must make NDSLs reasonably available (to the extent of available funds) to all eligible students who demonstrate financial need.

(2) The institution's selection procedures must be—

(i) Uniformly applied;

(ii) In writing; and

(iii) Maintained in the files of the student financial assistance office.

(3) The institution must maintain on file all NDSL applications for the period specified in § 674.19(c)(2).

(4) The institution may not make a loan under NDSL to a student who is unwilling to repay that loan. Default on a previous loan is evidence of that unwillingness.

*(d) *Determination of satisfactory progress.* (1) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses itself BEFORE the end of the payment period, the institution may make an NDSL advance to the student for the entire payment period.

(2) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses itself AFTER the end of the payment period, the institution may NOT advance any funds to the student for that payment period OR make adjustments in subsequent financial aid payments to compensate for the loss of aid for that period.

*(e) *Overpayment of grants.* Conditions under which an institution may make an NDSL payment to a student who is overpaid a grant:

(1) *Overpayment of a Pell Grant.* If an institution makes an overpayment of a Pell Grant to a student, it may continue to disburse an NDSL to that student if—

(i) The student is otherwise eligible; and

(ii) It can eliminate the overpayment in the award year in which it occurred by adjusting the subsequent Pell Grant payments for that award year.

(2) *Overpayment of a Pell Grant due to institutional error.* If the institution makes an overpayment of a Pell

Grant as a result of its own error and can not correct it as specified in subparagraph (1), it may continue to make payments to that student if the student—

(i) Is otherwise eligible; and

(ii) Acknowledges in writing the amount of overpayment and agrees to repay it in a reasonable period of time.

(3) *Overpayment of an SEOG.* An institution may continue to disburse an NDSL to a student who receives an overpayment on an SEOG if—

(i) The student is otherwise eligible; and

(ii) It can eliminate the overpayment by adjusting financial aid payments (other than Pell Grants) in the same award year in which the overpayment occurred.

(4) *Definition.* Overpayment of a grant means that a student's grant payments are greater than the amount he or she is entitled to receive.

*(f) *Default on loans.* Conditions under which an institution may make an NDSL to a student who is in default on loans made for attendance at that institution:

(1) *Guaranteed loan and Parent Loans for Undergraduate Students (PLUS).* An institution may make an NDSL or continue to advance NDSL funds to a student who is in default on a Guaranteed Student Loan or a PLUS if the Secretary (for a Federally insured loan) or a guarantee agency (for a loan insured by that guarantee agency) determines that the student has made satisfactory arrangements to repay the defaulted loan.

(2) *National Defense/Direct Student Loan.* An institution may make an NDSL or continue to advance NDSL funds to a student who is in default on a National Defense/Direct Student Loan made at that institution if the student has made arrangements, satisfactory to the institution, to repay the loan.

*(g) *Bankruptcy.* The Secretary does not consider a loan made under the National Defense Student Loan, National Direct Student Loan, Guaranteed Student Loan, or Parent Loans for Undergraduate Students Program that is discharged in bankruptcy to be in default for purposes of this section.

*(h) *GSL/PLUS—Reliance on student's statement.* An institution, in determining whether a student is in default on a loan made under the Guaranteed Student Loan Program or the PLUS program, may rely upon the student's written statement that he or she is not in default unless the institution has information to the contrary.

(20 U.S.C. 1087dd; and 1091f)

[46 FR 5241, Jan. 19, 1981, as amended at 46 FR 6324, Jan. 21, 1981]

§ 674.10 Special sessions.

A student enrolled at an institution in a special session (e.g., summer school) is eligible for an NDSL if he or she—

(a) Is otherwise eligible (see § 674.9);

(b) (1) Is registered as at least a half-time student at that institution for that session; or

(2) Is taking all of the courses required to complete his or her certificate or degree; and

(c) (1) Was attending that institution as at least a half-time student during the preceding term; or

(2) Has been accepted as at least a half-time student for the subsequent term.

(20 U.S.C. 1087aa-ii)

§ 674.11 Allowable costs of attendance.

(a) *General.* (1) Except as provided in paragraphs (d) and (e) of this section, a student's cost of attendance means—

(i) The tuition and fees charged to a full-time student for an academic year by the institution he or she is attending as determined under paragraph (b) of this section;

(ii) An allowance for room and board expenses for an academic year, as determined under paragraph (c) of this section;

(iii) A reasonable allowance determined by the institution for books and supplies for an academic year;

(iv) A reasonable allowance determined by the institution for transportation for an academic year. This allowance may include—

(A) The cost of travel between the student's residence and the institution; and

(B) The cost of travel required for completion of a course of study;

(v) A reasonable allowance determined by the institution for miscellaneous personal expenses for an academic year;

(vi) A reasonable allowance determined by the institution for an academic year for expenses related to study abroad for students enrolled in an academic program which normally includes a formal program of study outside the United States;

(vii) A reasonable allowance determined by the institution for expenses for an academic year related to child care for a student's dependent children; and

(viii) A reasonable allowance determined by the institution for a handicapped student's expenses for an academic year related to his or her handicap, if these expenses are not provided for by any other assisting agency or program. This allowance may include expenses related to special services, transportation, equipment and supplies.

(2) If another agency or program provides assistance for any expenses related to a student's handicap, thereby reducing the student's costs, the institution shall document such assistance as part of the student's financial aid record.

(3) For purposes of this section, a handicapped student is a student who meets the definition contained in section 602(1) of the Education of the Handicapped Act. Accordingly, a handicapped student is a student who is mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, or orthopedically impaired, or is otherwise health impaired or has specific learning disabilities which require special education and related services.

(4) The institution shall take into account when determining a student's cost of attendance—

(i) The period for which financial assistance is awarded; and

(ii) Whether the student is enrolled on a full-time or less than full-time basis.

(20 U.S.C. 1089)

(b) *Tuition and fees.* (1) An institution shall determine the tuition and fees charged a full-time student by calculating—

(i) The actual amount charged the full-time student for tuition and fees for an academic year; or

(ii) The average amount it charges full-time students for tuition and fees for an academic year. If the institution selects this option, it must determine an average cost for each of the following categories of students:

(A) Undergraduate students;

(B) Graduate students; and

(C) Professional students.

(2) If an institution establishes its tuition and fee charges on a residency requirement basis (e.g. In-State and Out-of-State) and elects to calculated an average tuition and fee charge, it shall establish a separate average charge for each different residency based classification.

(3) An institution may determine a separate average charge for any other distinct classification upon which it bases tuition and fee charges.

(4) An institution shall determine the tuition and fees charged a less than full-time student by—

(i) Calculating the actual amount it charges the student for tuition and fees for an academic year; or

(ii) Reducing the amount it calculated under paragraphs (b) (1), (2), or (3) of this section to reflect the less than full-time enrollment of that student.

(20 U.S.C. 1089)

(c) *Room and board.* (1) The institution shall calculate a student's room and board allowance as follows—

(i) For a student who has no dependents and lives with his or her parent(s), an allowance of $1,100;

(ii) For a student who has no dependents and lives in institutionally owned or operated housing—

(A) The actual amount charged the student for room and board for an academic year; or

(B) A standard allowance based on the average amount it charges most of its student residents for room and board for an academic year;

(iii) For a student who has no dependents and does not live with his or her parent(s) or in institutionally owned or operated housing, a standard allowance determined by the institution for room and board for an academic year; or

(iv) For a student who has dependents, an allowance determined by the institution for room and board for an academic year based upon expenses incurred by the student and his or her dependent(s).

(2) For purposes of this section, a spouse is considered a dependent.

(20 U.S.C. 1089)

(d) *Attendance costs for students in correspondence study programs.* The cost of attendance for a student enrolled in a correspondence study program means—

(1) Actual tuition and fees charged to the student for an academic year;

(2) A reasonable allowance determined by the institution for books and supplies for an academic year, if required for the completion of the program; and

(3) If incurred in fulfilling a required period of residential training, expenses for—

(i) Room and board; and

(ii) Travel between the student's residence and the institution.

(20 U.S.C. 1089)

(e) *Attendance costs for students whose program length exceeds the academic year at institutions using clock hours.* The cost of attendance for a student enrolled in an institution measuring progress in clock hours who is charged tuition and fees for a program whose length exceeds the length of the academic year at the institution, is determined by adding—

(1) Tuition and fees×clock hours in the academic year÷clock hours in the program plus

(2) Room and board and other applicable allowances determined under paragraphs (a) and (c) of this section.

(f) *Adjustments.* The institution may, in individual cases, adjust a student's cost of attendance if the cost of attendance calculated under paragraphs (a) through (e) of this section is not a reasonable approximation of the student's actual costs.

(20 U.S.C. 1089(e))

(g) *Required documentation.* An institution must be able to justify and document the cost of attendance figures established under this section.

(20 U.S.C. 1089)

[46 FR 6325, Jan. 21, 1981]

*§ 674.12 Expected family contribution.

(a) *Dependent students.* In determining the amount a dependent student and his or her spouse and parents are expected to contribute to the student's cost of attendance the financial aid administrator must consider—

(1) Any serious illness in the family. (Family members include the student, the student's parents and spouse, and any other persons the parents may claim as exemptions under the Internal Revenue Code);

(2) The number of the parents' dependent children;

(3) The number of the parents' dependent children attending institutions of higher education;

(4) Tuition costs of dependent children attending elementary and secondary schools; and

(5) Any other circumstances that could affect the ability of the student, the student's spouse, and the student's parents to contribute to his or her cost of attendance.

(b) *Independent students.* In determining the amount an independent student and spouse are expected to contribute to the student's cost of attendance, the financial aid administrator must consider—

(1) Any serious illness in the family. (Family members include the student, his or her spouse, and any other persons the student or spouse may claim as exemptions under the Internal Revenue Code);

(2) The number of the student's dependent children;

(3) The number of the student's dependent children attending institutions of higher education;

(4) Tuition costs of dependent children attending elementary and secondary schools; and

(5) Any other circumstances that could affect the ability of the student or spouse to contribute to the student's cost of attendance.

(c) *Special determination of dependent student-parent relationship.* (1) The student financial aid administrator must determine whether the relationship between a student and his or her parents makes it unreasonable to expect the parents to contribute to the student's cost of attendance, regardless of their ability to do so, if requested by a student who does not—

(i) Live with his or her parents;

(ii) Visit his or her parents for periods longer than typical for other adult family members; or

(iii) Receive gifts from his or her parents more valuable than those typically given to other adult nondependent offspring.

(2) Before determining that it is unreasonable for a parent of a dependent student to contribute to the student's attendance costs, the financial aid administrator must determine whether the student's parents are, in fact, willing to contribute toward those costs.

(3) The student financial aid administrator must make that determination part of the institution's written record.

(d) *Native American students.* To determine a Native American's expected family contribution, an institution may not consider the following as income or assets of the student or his or her family:

(1) Awards made under the Distribution of Judgment Funds Act (25 U.S.C. 1401 et seq.) or the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(2) Property that may not be sold or encumbered without the consent of the Secretary of the Interior.

(3) Any other property held in trust for the student or his or her family by the U.S. Government.

(e) *Annual determinations.* An institution must determine a student's need at least annually.

(20 U.S.C. 1087dd)

***§ 674.13 Approved need analysis systems.**

(a) An institution must use a Secretary approved need analysis system or calculation method in complying with the requirements in § 674.12 (expected family contribution).

(b) *Preapproved systems for dependent students.* The Secretary has approved the following systems for dependent students:

(1) The method of computing an expected family contribution used in the Pell Grant program (34 CFR Part 690).

(2) The income tax system if adjusted to reflect the number of the parents' dependent children who are attending institutions of higher education. The expected family contribution produced under this system is the sum of—

(i) The money the student is reasonably able to contribute;

(ii) The amount of Federal income tax paid by the student's parents;

(iii) 5% of the parents' net assets in excess of $17,000 if there are no farm or business assets; or

(iv) 5% of the parents' net assets in excess of $50,000 if there are farm and business assets. However, no more than $17,000 may be deducted for assets other than farm and business assets.

(c) *Criteria for other systems for dependent students.* (1) The Secretary approves other need analysis systems for dependent students that are properly submitted (see paragraph (e)), if the system produces expected family contribution figures that—

(i) Increase incrementally as the parents' financial strength, measured in constant dollars, increases;

(ii) Are equal for families of equal financial strength; and

(iii) Are within $50 of the expected family contribution figures in 75% of the sample cases supplied by the Secretary.

(2) The Secretary computes the sample cases by:

(i) Deducting from the sum of the parents' adjusted gross income and nontaxable income—

(A) The amount of Federal income taxes and social security taxes;

(B) An 8% allowance on total income for State and local taxes; and

(C) A family maintenance allowance (excluding the student during the academic year) using Department of Labor estimates at a low standard of living;

(ii) Adding to this remainder, 12% of the net market value of the parents' assets, after deducting a standard asset reserve; and

(iii) Applying a rate schedule that the Secretary will publish annually with the sample cases.

(3) (i) In developing sample cases, the Secretary selects cases where the main wage earner is 45 years of age.

(ii) The Secretary does not select cases that involve medical and dental expenses, casualty and theft loses, housekeeping allowances, farm or business assets, more than one family member attending a postsecondary institution as an undergraduate, social security or veteran's benefits, or any unusual circumstances.

(4) In comparing figures from systems submitted for approval with figures from sample cases, the Secretary treats an expected parental contribution of less than zero as zero.

(5) In order to insure measurement in constant dollars, the Secretary revises sample case figures for inflation annually by adjusting—

(i) Deductions for family maintenance;

(ii) The standard deduction from assets; and

(iii) The rate of contribution from income and assets.

(d) *Systems for independent students.* The Secretary approves the following systems for independent students:

(1) The method of computing an expected family contribution used in the Pell Grant program (34 CFR Part 690).

(2) The systems of need analysis for independent students published by those organizations approved for dependent students under paragraph (c).

(e) *Application procedures for system approval.* (1) An organization or individual wishing to have a system for dependent students approved must also submit a system for independent students. Both systems must be submitted to the Secretary by June 30.

(2) The Secretary lists approved systems in the FEDERAL REGISTER by the following September 1.

(3) Applications for approval must include—

(i) Information the Secretary needs to determine whether or not the system meets the requirements of paragraph (c); and

(ii) The expected family contribution amounts produced by that system for sample cases.

(f) *Duration of approval.* (1) There is no specified expiration date for need analysis systems for dependent students approved under paragraph (b).

(2) An institution may use the need analysis systems for dependent and independent students approved under paragraphs (c) and (d) to determine student eligibility and amount of assistance under Campus Based Programs for an academic year that begins—

(i) No earlier than the following June 1; or

(ii) No later than 12 months after that June 1 date.

(g) *Adjustments.* The institution, in individual cases, may further adjust expected family contributions computed according to one of the approved systems if—

(1) The student financial aid administrator believes the expected family contribution does not accurately reflect the student's (or parents') ability to contribute; and

(2) The institution documents all adjustments in writing with an accompanying explanation and makes them part of the institution's records.

(20 U.S.C. 1087dd)

*§ 674.14 Coordination of student financial aid programs, loan amount, and overaward.

(a) *Coordinating official.* An institution must appoint a coordinating official for its NDSL and other Federal and non-Federal student financial aid programs.

(b) *Overaward prohibited, general rule.* (1) An institution may not award an NDSL to a student if the NDSL, when combined with all other resources, exceeds the student's financial need. The institution, however, does NOT violate this rule if—

(i) The student receives additional funds after the institution awards aid, and total resources exceed his or her financial need by $200 or less by the end of the academic year; or

(ii) The student earns more money from employment than the institution anticipated when it awarded the NDSL, and it treats the earnings in accordance with paragraph (c) (prevention of overaward).

(2) A student's financial need may not exceed his or her cost of attendance.

(3) If a student's resources exceed his or her need by more than $200, and the excess is not from employment, the overaward is the amount that exceeds the $200.

(c) *Prevention of overaward by treatment of earnings.* An institution must take the following steps when it learns that a borrrower has earned, or will earn, more than $200 over his or her financial need:

(1) It must decide whether the student needs the money to pay for necessary additional educational costs, unanticipated when it awarded financial aid to the student. If the student does, no further action is necessary.

(2) If the student's earnings still exceed need by $200 or more after the institution subtracts any additional costs, it must cancel any unpaid loan or grant (other than Pell Grants) to avoid exceeding need by more than $200.

(3) If the student's earnings still exceed his or her need by more than $200 after the institution takes the steps required in the two preceding subparagraphs, and the student is enrolled for the next academic year, the institution must use the amount that exceeds $200 as—

(i) A resource to help pay the student's cost of attendance in the following year; or

(ii) A substitute for the student's expected family contribution for the current year unless a GSL or PLUS is used for that purpose.

(4) If the student's earnings still exceed his or her need by more than $200 after the institution takes the steps required in paragraphs (c) (1) and (2) of this paragraph, and the student is NOT enrolled for the next academic year, no further action is necessary.

(d) *Resources.* The Secretary considers that "resources" include, but are not limited to, any—

(1) Funds the student is entitled to receive from a Pell Grant, regardless of whether the student applies for it;

(2) Waiver of tuition and fees;

(3) Scholarship or grant, including an SEOG or athletic scholarship;

(4) Fellowship or assistantship;

(5) Insurance programs for the student's education, including any social security educational benefits not included in computing EFC;

(6) GSL, or PLUS as indicated under paragraph (e);

(7) Long-term loans, excluding GSL and PLUS, made by the institution;

(8) Net earnings from employment, including any part of an independent student's net earnings not included as part of the student's EFC. ("Net earnings" means gross earnings minus taxes and job related costs); and

(9) Veterans benefits (except that part included as part of the student's EFC).

(e) *Treatment of Guaranteed Student Loans (GSL) and Parent Loans for Undergraduate Students (PLUS).* (1) A student may use a GSL or a PLUS as a substitute for his or her expected family contribution.

(2) However, if the loan amounts under one or both of these programs exceeds the student's expected family contribution, the Secretary considers the excess to be a resource.

(f) *Administrative responsibility.* (1) An institution is responsible ONLY for the resources it—

(i) Makes available to its students;

(ii) Knows about; or

(iii) Can reasonably anticipate at the time it awards NDSL funds to the student.

(2) An institution must take reasonable steps to stay informed about the earnings of a student employed outside the institution.

(g) The provisions of paragraph (b) of this section are retroactive to October 12, 1976.

(20 U.S.C. 1087dd)

§ 674.15 Coordination with BIA grants.

*(a) To determine the amount of an NDSL for a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution must prepare a package of student aid—

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with packages prepared for students in similar circumstances who are not eligible for a BIA education grant.

•(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements that package.

(2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.

•(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted and may be deducted only from the other assistance, not the BIA education grant.

(2) The institution must deduct the excess in the following sequence: loans, work-study awards, and grants other than Pell Grants. However, the institution may change the sequence if requested by a student and the institution believes the change benefits the student.

•(d) To determine the financial need of a BIA-eligible student, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(20 U.S.C. 1087dd)

§ 674.16 Making and disbursing loans.

(a) Before an institution makes its first advance to a student, it must—

(1) Inform the borrower of his or her obligations to—

(i) Repay the loan; and

(ii) Apply the proceeds only to educational expenses.

(2) Provide the borrower with the following information—

(i) The yearly and cumulative maximum loan amounts that may be borrowed;

(ii) The repayment terms;

(iii) The maximum number of years in which the loan must be repaid;

(iv) The interest rate and the minimum monthly payment;

(v) Other entitlements the borrower may have for deferral, cancellation, repayment, consolidation or other refinancing of the loan;

(vi) A definition of default and the consequences to the borrower if he or she defaults, including a description of any arrangements made with credit bureau organizations.

(vii) The effects of accepting the loan on the eligibility of the borrower for other forms of student assistance.

(b) An institution may satisfy the requirements of paragraph (a) of this section by mailing the information to the student.

(c)(1) An institution using a semester, trimester, or quarter system must advance each payment period a portion of a loan awarded for a full academic year.

(2) The institution determines the amount advanced each payment period by the following fraction:

$$\frac{\mathrm{NDSL}}{\mathrm{N}}$$

Where NDSL = total NDSL award
and N = the number of semesters, trimesters, or quarters in that year.

(3) If the total NDSL award is to a student attending less than a full academic year, the institution determines the amount of each advance by the following fraction:

$$\frac{\mathrm{NDSL}}{\mathrm{R}}$$

Where NDSL = total NDSL award
and R = the number of semesters, trimesters, or quarters remaining in the academic year.

(d) Notwithstanding paragraph (c), if a student incurs uneven costs during an academic year and needs additional funds in a particular payment period, the institution may advance NDSL funds to the student for that purpose.

(e)(1) An institution NOT using a semester, trimester, or quarter system must advance funds to the student at least twice during an academic year.

(2) The institution must make one advance at the beginning and another at the midpoint of the academic year.

(3) The institution may not advance more than half the loan before the midpoint.

(f)(1) Within each payment period, an institution may advance funds to the student at such time and in such amounts as it determines best meets the student's needs.

(2) It may pay the borrower directly by check or by crediting his or her account with the institution.

(3) However, if it credits the account, the institution must give the borrower a receipt.

(4) In either case, the borrower must sign for the funds in the Schedule of Advances part of the note.

(g) Only one advance is necessary if the total amount the institution awards a student under the Campus Based Programs is less than $301.

(h) A 6 month training program that prepares students for gainful employment in a recognized occupation equals a full academic year for purposes of disbursement.

(i) A correspondence student must submit his or her first completed lesson before receiving an advance.

(j)(1) An institution may not disburse loan funds to a student unless the student files a statement of educational purpose in which the student declares that he or she will use the loan soleiy for educational expenses in connection with attendance at the institution.

(2) The Secretary considers the following as satifying this requirement: Statement of Educational Purpose I declare that I will use any funds I receive under the NDSL program for expenses connected with attendance at (Name of institution)————————

(Date)————(Signature)————————.

(k) If an institution computes a student's need using estimated data submitted before January 1 of the previous award year, the institution may not pay the student unless it verifies that information.

(20 U.S.C. 424, 1087cc, 1087cc-1 and 1094)

§ 674.17 Federal interest in allocated funds—Transfer of loan fund.

*(a) Except for funds received for the administrative cost allowance (see § 674.18(b)), funds received by an institution under the NDSL program are held in trust for the intended student beneficiaries. Funds may not be used or hypothecated (i.e., serve as collateral) for any other purpose.

(b) (1) If an institution responsible for an NDSL Fund closes or no longer wants to participate in the program, the Secretary will take the following steps to protect the outstanding loans and the Federal interest in that Fund:

(i) The undertaking of a capital distribution of the liquid assets of the Fund according to section 466(c) of the Act;

(ii) The transfer of the outstanding loans to another institution in the same State; or

(iii) The transfer of the outstanding loans to the Department of Education if no institution in that State wishes to receive them.

(2) The Secretary considers the cost of collecting the transferred outstanding loans to be equal to the institutional share of those loans.

(3) If the Secretary transfers the outstanding loans to a second institution, the second institution may deposit the collections on those loans in its own Fund. The Secretary considers the first institution's share of those collections to be the second institution's institutional capital contribution.

(4) If the Secretary transfers the outstanding loans to the Department of Education, the Secretary may use the institutional share of those collections to pay collection costs.

(c) If more than one institution in the State offers to collect the outstanding loans, the Secretary will transfer the loans to one or more of the competing institutions on the basis of—

(1) Primarily, the institution's demonstrated loan collection capability; and

(2) Secondarily, the number of students of the first institution expected to enroll in the second institution.

(d) No audit exception will be taken against the second institution on account of actions or omissions of the first institution in the administration of its Fund. The second institution must segregate the transferred Fund account until an audit satisfactory to the Secretary is performed on the operation of the first institution's program.

(20 U.S.C. 1087aa-1087ii; 1087cc)

§ 674.18 Use of funds.

(a) *General.* An institution must deposit the funds it receives under the NDSL program into its Student Loan Fund. It may use these funds only for making loans and the other activities specified in § 674.8(b).

(b) *Administrative cost allowance.* An institution participating in the NDSL program is entitled to an administrative cost allowance.

(1) The amount of the allowance equals—

(i) Five (5) percent of the first $2,750,000 of the institution's expenditures in an award year under CWS, SEOG and NDSL programs; plus

(ii) Four (4) percent of its expenditures which are greater than $2,750,000 but less than $5,500,000; plus

(iii) Three (3) percent of its expenditures in excess of $5,500,000.

(2) However, for the purpose of calculating the allowance in paragraph (b)(1) of this section, CWS expenditures made under the Community Service Learning Program (§ 675.28) or NDSL loans that are assigned to the Secretary under Section 463(a)(6)(B) of the Higher Education Act are not included.

(3) An institution must use its administrative cost allowance to offset its costs of administering the Pell Grant, CWS, SEOG and NDSL programs. Administrative costs also include the expenses incurred for carrying out the student consumer information services requirements of Subpart C of the Student Assistance General Provisions, 34 CFR Part 668.

(4) An institution may not charge any administrative expenses against its NDSL Fund for an award year unless it advances funds to students for that year.

(20 U.S.C. 1087cc, 1087dd, and 1096)

§ 674.19 Fiscal procedures and records.

*(a) *Fiscal procedures.* (1) In administering its NDSL program, an institution must establish and maintain an internal control system of checks and balances that insures that no office can both authorize payments and disburse funds to students.

(2) A separate bank account for Federal funds is not required, except as provided in paragraph (b). However, an institution must notify any bank in which it deposits Federal funds of all accounts in that bank in which it deposits Federal funds. The institution may give this notice by either—

(i) Including in the name of the account the fact that Federal funds are deposited; or

(ii) Notifying the bank in writing of the accounts in which it deposits Federal funds. The institution must retain a copy of this notice in its files.

(b) *Account for NDSL Fund.* (1) An institution must maintain all the cash of its NDSL Fund in a separate bank account that contains no other funds if the Secretary determines that the institution's accounting system and internal controls do not—

(i) Meet the requirements of paragraph (c), paragraph (d), or both;

(ii) Identify the cash balance of the NDSL Fund as readily as if the Fund were maintained in a separate bank account; or

(iii) Adequately identify the earnings of the Fund.

(2) The Secretary makes that determination on the basis of an audit examination or as a result of a program review.

(3) That separate bank account must be identified as the institution's NDSL Fund account and must contain all the cash of the institution's NDSL Fund. That cash includes Federal capital contributions, institutional capital contributions, repayments made by borrowers, Direct loan cancellation payments, and any earnings of the Fund including interest.

(c) *Records and reporting.* (1) An institution must establish and maintain on a current basis financial records that reflect all program transactions. The institution must establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution must also establish and maintain program and fiscal records that—

(i) Are reconciled at least monthly;

(ii) Identify each student's account and status;

(iii) Show the eligibility of each student aided under the program;

(iv) Show the amount of need and how the need was met for each student; and

(v) Identify the administrator who determined the need.

(3) Each year an institution must submit a Fiscal-Operations Report plus other information the Secretary requires. The institution must comply with requirements to insure the information reported is accurate and must submit it on the form and at the time specified by the Secretary.

(d) *Retention of records*—(1) *Records.* Each institution must keep intact and accessible records of the receipt and expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent.

*(2) *Period of retention.* Except for loan records and audit questions, an institution must keep records for an award year for five years after it submits its Fiscal-Operations Report for that year.

(3) *Loan records.* (i) An institution must maintain a repayment history for each borrower. This repayment history must show the date and amount of each repayment over the life of the loan. It must also indicate the amount of each repayment credited to principal and interest respectively.

(ii) This history must also show the date, nature, and result of each contact with the borrower or proper endorser in the collection of an overdue loan. The institution must include in the repayment history copies of all correspondence to or from the borrower and endorser, except routine bills, routine overdue notices, and routine form letters.

(iii) An institution must retain repayment records, including cancellation and deferment requests, for at least 5 years from the date of the loan's assignment or final repayment or cancellation.

*(4) *Microfilm copies.* An institution may substitute microfilm copies for original records in meeting the requirements of this section.

*(5) *Audit questions.* An institution must keep records in any claim or expenditure questioned by Federal audit until resolution of any audit questions. However, the institution does not have to retain records beyond 5 years if the actions taken by the United States to recover funds are barred by the Federal statute of limitation in 28 U.S.C. 2415(b).

(e) *Audits-Federal.* An institution must give the Secretary, the Comptroller General of the United States, or their duly authorized representatives access to the records specified in paragraphs (d) (1), (2), and (3) and to any other pertinent books, documents, papers, and records.

(f) *Separate records.* An institution need not maintain separate records for National Defense Student Loans and National Direct Student Loans except for loan cancellation records.

*(g) *Audits—Non-Federal.* (1) An institution must audit, or have audited under its direction, NDSL transactions to determine at a minimum—

(i) The fiscal integrity of financial transactions and reports; and

(ii) If those transactions are in compliance with the applicable laws and regulations.

(2) The audits must be performed in accordance with the Education Department's "Audit Guide" for student financial aid programs.

(3) The institution must have an audit performed at least once every two years unless the Secretary approves a longer interval.

(4) Each audit must cover the entire period of time since the last audit.

*(h) *Audit reports.* The institution must submit audit reports to its local regional office of the Education Department's Office of Inspector General Audit Agency. It must give the Sec-

retary and the Inspector General access to records or other documents necessary to the audit's review.

(i) *Safekeeping.* An institution must keep promissory notes and student loan ledgers in good order in a locked, fire proof container. Only authorized personnel may have access to these documents.

(20 U.S.C. 424, 1087cc, 1232c)

§ 674.20 Compliance with truth in lending and equal credit opportunity requirements.

In making an NDSL, an institution must comply with the truth in lending requirements of Regulation Z (12 CFR Part 226) and with the equal credit opportunity requirements of Regulation B (12 CFR Part 202). With regard to Regulation B, the Secretary considers the NDSL program to be a credit assistance program authorized by Federal law for the benefit of an economically disadvantaged class of persons within the meaning of 12 CFR 202.8(a)(1). Therefore the institution may request a loan applicant to disclose his or her marital status, income from alimony, child support, and spouse's income and signature. (12 CFR 202.8(d)).

(20 U.S.C. 1087aa-1087ii)

§ 674.21 Deposit of institutional capital contributions into Fund.

When an institution deposits any Federal capital contribution to its Fund it must deposit its institutional capital contribution at the same time.

(20 U.S.C. 1087cc)

Subpart B—Terms of Loans

§ 674.31 Defense and Direct loan maximums for students.

(a) The maximum amount of Defense and Direct loans an eligible student may borrow is—

(1) $3,000 for a student who has not completed 2 academic years of study toward a bachelor's degree. The $3,000 includes Defense and Direct loans.

(2) $6,000 for a student who has completed 2 academic years of study toward a bachelor's degree and has achieved third-year status but has NOT received the degree. The $6,000 includes Defense and Direct loans the student borrowed before completing the 2 years of study toward a bachelor's degree; and

(3) $12,000 for study toward professional or graduate degrees. The $12,000 includes Defense and Direct loans a student borrowed for undergraduate study.

(20 U.S.C. 1087dd)

§ 674.32 Promissory note—loan repayment.

(a) *Promissory note.* (1) To receive a loan a student must sign a promissory note before the institution makes any advance.

(2) The Secretary must approve the promissory note used by the lending institution.

(3) The note in Appendix B is acceptable. The institution must not change the meaning of this note without the Secretary's approval.

(4) The lending institution must give a copy of the signed note to the borrower at or before the exit interview.

(b) *Interest rate.* The promissory note must state that—

(1)(i) For loans made before July 1, 1981, the rate of interest on the loan is 3 percent per annum on the unpaid balance; and

(ii) For loans made on or after July 1, 1981, the rate of interest on the loans is 4 percent per annum on the unpaid balance; and

(2) No interest may be charged before the repayment period begins or during a deferment period authorized under § 674.34a (a), (b), and (d).

(3) No repayment of principal or interest will be required until six months after the completion of any deferment period as set forth in § 674.34a (a), (b), and (d).

(c) *Repayment.* (1) The promissory note must state that the repayment period—

(i) Begins 6 months after the borrower ceases to be a least a half-time student at an institution of higher education or a comparable institution outside the U.S. approved for this purpose by the Secretary, and normally ends 10 years later;

(ii) May begin earlier if the borrower requests it; and

(iii) May vary because of minimum monthly repayments (see § 674.33) or deferments (see §§ 674.34 and 674.34a).

(iv) May be extended for up to ten years if, during the repayment period, the institution determines that the borrower is or will be a low-income individual (as defined in § 674.34a(h)(8)) during the repayment period; and

(v) May be adjusted to reflect the income of the borrower if the institution determines the borrower to be a low-income individual.

(2) The promissory note must state that the borrower must repay the loan—

(i) In equal quarterly, bimonthly, or monthly amounts, as the institution chooses; or

(ii) In graduated installments if the borrower requests a graduated repayment schedule, the institution submits the schedule to the Secretary for approval, and the Secretary approves it.

(3) A repayment plan must be established before the student ceases to be at least a half-time student.

(4) The institution must give the borrower a copy of the promissory note with a copy of the repayment plan attached.

(5) If the last repayment is $10 or less the institution may add it the next-to-last repayment.

(6) A loan repayment must first be applied to interest due on the loan, with the remainder applied to principal.

(d) *Minimum rates of repayment—deferments.* (1) The promissory note may, at the option of the institution, state that the monthly repayments may vary according to the minimum monthly repayment provision (see § 674.33).

(2) The promissory note must include the deferment provisions set forth in § 674.34a.

(e) *Prepayment.* (1) The promissory note must state that the borrower may prepay all or part of the loan at any time without penalty.

(2) Amounts repaid during the academic year in which the loan was made will be used to reduce the original loan amount and will not be considered prepayments.

(3) If a borrower repays more than the amount due for any repayment period, the excess must be used to prepay the principal unless the borrower designates it as an advance payment of the next regular installment.

(f) *Penalty charge.* (1) An institution may state in the promissory note that a penalty will be charged if the borrower does not—

(i) Repay all or part of a scheduled repayment when due;

(ii) File a timely request for cancellation or deferment with the institution. This request must include sufficient evidence to enable the institution to determine whether the borrower is entitled to a cancellation or deferment.

(2) The institution may include the following penalty charges in the promissory note. If the loan is repayable—

(i) Monthly, the maximum monthly charge is $1 for the first month and $2 for each additional month, for each overdue payment;

(ii) Bimonthly, the maximum bimonthly charge is $3 for each overdue payment; and

(iii) Quarterly, the maximum charge per quarter is $6 for each overdue payment.

(3) *Applying penalty charges.* The institution may—

(i) Add the penalty charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after the borrower receives notice of the penalty charge.

(g) *Security and endorsement.* The promissory note must state that the loan must be made without security and endorsement unless—

(1) The borrower is a minor; and

(2) Under applicable State law, a note signed by a minor would not create a binding obligation.

(h) *Assignment.* The promissory note must state that a note may only be assigned to—

(1) The United States or an institution approved by the Secretary; or

(2) An institution the borrower has transferred to, if that institution—

(i) Is participating in the NDSL program; or

(ii) Is not participating, but has been approved by the Secretary; to receive the notes.

(i) *Acceleration.* The promissory note must state that an institution may demand immediate repayment of the entire loan, including any penalty charges and accrued interest, if the borrower does not—

(1) Make a scheduled repayment on time; or

(2) File cancellation or deferment form(s) with the institution on time.

(j) *Cost of collection.* The promissory note may state that the borrower must pay all attorney's fees and other loan collection costs and charges.

(k) *Disclosure of information.* The promissory note shall state that if the borrower defaults on the loan and the loan is referred to the Secretary, the Secretary may disclose to a credit bureau organization—

(1) That the borrower has defaulted on the loan; and

(2) Any other relevant information.

(20 U.S.C. 425 and 1087dd)

§ 674.33 Minimum repayment rates.

In this section monthly repayment amounts also apply to bimonthly or quarterly equivalents.

(a)(1) *Defense loan.* An institution may require a borrower to pay a $15 minimum monthly repayment if—

(i) The monthly repayment of principal and interest for a 10 year repayment period is less than $15 a month; and

(ii) The promissory note includes a $15 minimum monthly repayment provision.

(2) *Direct loan.* The institution may require a borrower to pay a $30 minimum monthly repayment if—

(i) The monthly repayment of principal and interest for a 10 year repayment period is less than $30 a month; and

(ii) The promissory note includes a $30 minimum monthly repayment provision.

(b) *Minimum repayment of loans from more than one institution*—(1) *Defense loan.* If a borrower has received loans from more than one institution and—

(i) Only one institution exercises the $15 option when the repayment is less than $15, that institution will receive the difference between $15 and the repayment owed to the other institution; or

(ii) Each institution exercises the $15 minimum option, the minimum repayment must be divided among the institutions in proportion to the amount of principal advanced by each institution.

(2) *Direct loan.* If a borrower has received loans from more than one institution and—

(i) Only one institution exercises the $30 option when the repayment is less than $30, that institution will receive the difference between $30 and the repayment owed to the other institution; or

(ii) Each institution exercises the $30 minimum option, the minimum repayment must be divided among the institutions in proportion to the amount of principal advanced by each institution.

(c) *Minimum repayment of both Direct and Defense loans from one or more institutions.* If a borrower has received both a Direct and a Defense loan, the following rules apply. In all cases the repayment includes principal and interest.

(1) If the total monthly repayment is at least $30 for both a Defense and a Direct loan, no institution may exercise a minimum repayment option, even if the Defense loan repayment is less than $15 or the Direct loan repayment is less than $30.

(2) If the total monthly repayment is less than $30 for both the Defense and Direct loans, an institution may exercise either minimum repayment option. The maximum monthly repayment, however, may not exceed $30 a month.

(3) If—

(i) The total monthly repayment is less than $30; and

(ii) The amount owed on a Defense loan is less than $15, the amount attributed to the Defense loan may not exceed $15 a month. However, $15 may be attributed to the Defense loan ONLY if the institution exercises the minimum option on the Defense loan.

(d) *Minimum repayment of Direct loans with different interest rates, or* *with different provisions, from one or more institutions.*

(1) If a borrower has received a Direct loan at 3 percent and a Direct loan at 4 percent from the same institution, and the total monthly repayment is at least $30 for both the Direct loan at 3 percent and the Direct loan at 4 percent, the institution may not exercise the minimum monthly payment on either loan.

(2) If the borrower has received a Direct loan at 3 percent and a Direct loan at 4 percent at the same institution and the total monthly repayment is less than $30, the institution may exercise the $30 minimum payment option, providing it is in the promissory notes, and the institution divides the repayment between the accounts in proportion to the amount of principal advanced under each loan.

(3) If a borrower has received a Direct loan at 3 percent from one institution and a Direct loan at 4 percent from another institution, each institution shall follow the procedures outlined in paragraph (b)(2) of this section.

(4) If a borrower has received Direct loans prior to October 1, 1980 and a Direct loan between October 1, 1980 and June 30, 1981 the institution shall follow the procedures outlined in paragraphs (d)(1) and (b)(2) of this section.

(20 U.S.C. 425 and 1087dd; section 137d of Pub. L. 92-318)

§ 674.34 Deferment of repayment—Defense or Direct loans made on or before September 30, 1980.

(a) Principal need not be repaid and interest will not accrue during a period when a borrower is at least a half-time student at an institution of higher education or a comparable institution outside the U.S. approved by the Secretary for this purpose.

(b) Principal need not be repaid and interest will not accrue for a period of up to 3 years during which time the borrower is—

(1) A member of the U.S. Armed Forces (see § 174.56);

(2) A Peace Corps volunteer; or

(3) A volunteer under the Domestic Volunteer Service Act of 1973.

(c) The institution must not include the deferment periods described in paragraphs (a) and (b) when determining the 10 year repayment period.

(d)(1) The institution may defer repayments under extraordinary circumstances. Interest, however, (unlike in paragraphs (a) and (b)) continues to accrue during this deferment period.

(2) If a borrower is unable to make a scheduled repayment due to extraordinary circumstances such as a prolonged illness or unemployment, he or she may ask the institution to change the repayment schedule within the 10 year repayment period.

(3)(i) If a change in the repayment schedule of a Defense loan would extend the repayment period beyond 10 years, the institution must notify the Secretary of the change.

(ii) If a change in the repayment schedule of a Direct loan would extend the repayment period beyond 10 years, the institution must notify the Secretary of the change and receive the Secretary's approval before making it.

(e)(1) The institution may defer a borrower's Direct loan repayments or revise his or her repayment schedule for up to 1 year if—

(i) The institution exercised the minimum monthly repayment rate;

(ii) The borrower is unable, due to extraordinary circumstances, to make repayment when due; and

(iii) The borrower has applied for deferment or a revised repayment schedule.

(2) If, at the end of the 1 year period, the borrower is still unable to repay at the minimum monthly rate because of extraordinary circumstances, the institution may defer repayment or revise repayments for up to another year.

(3) If the institution defers repayment on a loan or revises a repayment schedule under paragraph (e) of this section, (4), or (5) of this paragraph, interest continues to accrue.

(4) The institution may not defer a loan or revise a repayment schedule under paragraphs (e) (1) and (2) of this section if the revision or deferment results in a repayment period of more than 10 years.

(f) (1) The institution may defer Defense loan repayments up to 3 years for a less than half-time student borrower taking courses that are creditable toward a degree.

(2) Interest accrues during this deferment period.

(3) The institution may exclude these deferment periods in computing the 10 year repayment period.

(20 U.S.C. 425 and 1087dd)

§ 674.34a Deferment of repayment—Direct loans made on or after October 1, 1980.

(a) Principal need not be repaid and interest will not accrue during a period when a borrower is at least a half-time student at an institution of higher education or a comparable institution outside the U.S. approved by the Secretary for this purpose.

(b) Principal need not be repaid and interest will not accrue for a period of up to 3 years during which time the borrower is—

(1) A member of the U.S. Armed Forces or an officer in the Commissioned Corps of the U.S. Public Health Service; (see § 674.56);

(2) A Peace Corps volunteer; or

(3) A volunteer under the Domestic Volunteer Service Act of 1973;

(4) A full-time volunteer in service which the Secretary has determined is comparable to service in the Peace Corps or under the Domestic Volunteer Service Act of 1973 (ACTION programs). The Secretary considers that a borrower is providing comparable service if he or she satisfies the following five criteria:

(i) The borrower serves in an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1954;

(ii) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions;

(iii) The borrower's compensation does not exceed the compensation received by a full-time volunteer in the Peace Corps or in a program administered by the ACTION agency. Compensation includes an allowance for subsistence, necessary travel expenses, and stipends;

(iv) The borrower, as part of his or her duties, does not give religious instruction, conduct worship service, engage in religious proselytizing, or engage in fundraising to support religious activities.

(v) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(5) Temporarily totally disabled, as established by an affidavit of a qualified physician, or unable to secure employment because the borrower is providing care such as continuous nursing or other similar services required by a spouse who is so disabled.

(c)(1) "Temporarily totally disabled" for purposes of paragraph (b) of this section with regard to the borrower means an injury or illness which prevents an individual from attending an eligible institution or to be gainfully employed for an extended period of time.

(2) "Temporarily totally disabled" with regard to the borrower's spouse means an injury or illness, established by an affidavit of a qualified physician, that requires the borrower to provide care such as continuous nursing or other similar services thus preventing the borrower from obtaining gainful employment.

(d)(1) Principal need not be paid and interest will not accrue for a period not to exceed two years during which time the borrower is serving an eligible internship after obtaining a bachelor's or professional degree.

(2) An eligible internship is an internship which a person is required to undergo to receive professional recognition required to begin professional practice or service. Medical residency is an example of such an internship.

(e) The institution must not include the deferment periods described in paragraphs (a), (b), (d) and the grace period described in paragraph (f) when determining the 10-year repayment period.

(f) No repayment of principal or interest will be required to begin until six months after the completion of any period during which the borrower is in deferment under paragraph (a), (b), and (d).

(g)(1) The institution may defer repayments under extraordinary circumstances.

(2) If a borrower is unable to make a scheduled repayment due to extraordinary circumstances such as a pro-

longed illness or unemployment, he or she may ask the institution to change the repayment schedule within the 10 year repayment period.

(3) If a change in the repayment schedule of a Defense loan would extend the repayment period beyond 10 years, the institution must notify the Secretary of the change. If a change in the repayment schedule of a Direct loan would extend the repayment period beyond 10 years, the institution must notify the Secretary of the change and receive the Secretary's approval before making it.

(h)(1) The institution may defer a borrower's Direct loan repayments or revise his or her repayment schedule for up to 1 year if—

(i) The institution exercised the minimum monthly repayment rate;

(ii) The borrower is unable, due to extraordinary circumstances, to make repayment when due; and

(iii) The borrower has applied for deferment or a revised repayment schedule.

(2) If, at the end of the 1 year period, the borrower is still unable to repay at the minimum monthly rate because of extraordinary circumstances, the institution may defer repayment or revise repayments for up to another year.

(3) If the institution defers repayment on a loan or revises a repayment schedule under paragraph (g) of this section, interest continues to accrue.

(4) The institution may not defer a loan or revise a repayment schedule under paragraphs (g) (1) and (2) of this section if the revision or deferment results in a repayment period of more than 10 years.

(i) The institution may—

(1) Extend the repayment period up to ten years for any student borrower who during the repayment period is a low-income individual if that individual is expected to remain a low-income individual during that repayment period. The term "low-income individual" means an individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of the Census.

(2) Adjust the repayment schedule to reflect the income of that individual.

(20 U.S.C. 425 and 1087dd)

§ 674.35 Postponement of loan repayments in anticipation of cancellation.

(a) An institution must postpone loan repayments for a 12 month period if the borrower—

(1) Teaches or provides other services eligible for loan cancellation; and

(2) Submits a statement signed by a responsible official in the military, agency, or school employing the borrower, specifying that the borrower is so employed. The statement must describe the borrower's job, list the period of employment, and state whether the job is full- or part-time.

(b) If a borrower has received both Defense and Direct loans and is eligible for cancellation benefits on only one, the institution may postpone only repayments on the loan for which cancellation is available.

(20 U.S.C. 425 and 1087dd-ee)

§ 674.36 Treatment of loan repayments where cancellation, loan repayments, and minimum monthly repayments apply.

(a) An institution may not exercise the minimum monthly repayment provisions on a note when the borrower has received a partial cancellation for the period covered by a postponement.

(b) If a borrower has received both Defense and Direct loans and only one can be cancelled, the amount due on the uncancelled loan is the amount established in § 674.32(c), loan repayment terms or § 674.33(a), minimum repayment rates.

(20 U.S.C. 425 and 1087dd-ee)

Subpart C—Due Diligence

§ 674.41 [Reserved]

§ 674.42 Due diligence.

Each institution must be diligent and forceful in collecting loans. In exercising this responsibility it must—

(a) Inform each borrower before he or she signs the note that he or she must repay the loan and apply the proceeds only to educational expenses;

(b) Conduct an exit interview with each borrower (described in § 674.43) before he or she leaves the institution and, again, explain his or her obligation to repay the loan;

(c) In or before the exit interview—

(1) Give a copy of the signed promissory note and the repayment schedule to the borrower; and

(2) Have the borrower sign the schedule. A repayment schedule shows the borrower the total amount of his or her loan and states the repayment amount and the date each repayment is due;

(d) Keep a signed copy of the repayment schedule in the institution's files;

(e) Mail a copy of the note and two copies of the repayment schedule to a borrower who leaves the institution without notice, requesting that the borrower sign and return one of the schedules to the institution;

(f) Keep the borrower informed, on a timely basis, of all changes in the program that affect his or her rights or responsibilities; and

(g) Respond promptly to all inquiries from the borrower or any endorser.

(20 U.S.C. 1087cc)

§ 674.43 Contact with the borrower prior to repayment period.

(a) *Information coordination.* An institution must coordinate information among its offices, e.g. the registrar, student financial aid, business and alumni offices. Doing so will enable it to determine—

(1) When a borrower will graduate so an exit interview may be scheduled; or

(2) Whether a borrower has left the institution without notice so that required information may be mailed to him or her.

(b) *Exit interview.* An institution must, if possible, conduct an exit interview with each borrower before he or she leaves the institution. If an individual interview is not feasible, a group interview is permitted. During the interview the institution must tell the borrower again, as it did when the loan was made, that the borrower received a loan and the loan must be repaid in accordance with the repayment schedule. Furthermore, the institution must explain, in detail, the borrower's rights and obligations under the loan including the following:

(1) The borrower must inform the institution immediately of any address change.

(2) The full amount of the loan and the interest rate.

(3) The first repayment amount and when it is due.

(4) The borrower must contact the institution before the due date of any repayment he or she cannot make.

(5) His or her deferment, cancellation or postponement rights and the procedures for filing for these benefits.

(6) The right to prepay without penalty.

(7) The loan note's optional features such as minimum monthly repayment, penalty and collection charges.

(c) *The institution's contact with the borrower.* (1) For loans made on or before September 30, 1980, an institution must contact a borrower at least 3 times before the first repayment is due as follows:

(i) 90 days into the grace period, the institution must send to the borrower the information in paragraph (b) plus other information necessary to satisfy Truth in Lending Act regulations.

(ii) 180 days into the grace period, the institution must notify the borrower of the date his or her grace period ends.

(iii) Approximately 30 days before the first repayment is due, the institution must notify the borrower of that repayment date and the amount due. (see § 674.44(a)(1).)

(2) For loans made on or after October 1, 1980, an institution must contact a borrower at least 2 times before the first repayment is due as follows:

(i) 90 days into the grace period, the institution must send to the borrower the information in paragraph (b) plus other information necessary to satisfy Truth in Lending Act regulations.

(ii) Approximately 30 days before the first repayment is due, the institution must notify the borrower of that repayment date and the amount due. (see § 674.44(a)(1).)

(d) *Address search.* If an institution discovers that a borrower's address has changed, it must conduct the search required under § 674.44(a)(6) to find the correct address.

(20 U.S.C. 425 and 1087cc)

§ 674.44 Billing procedures.

(a) An institution must establish and maintain the following billing and follow-up procedures until all loans are repaid:

(1) Unless a coupon system is established, the institution must send to each borrower—

(i) A letter of notice and a statement of account at least 30 days before the first payment is due; and

(ii) A statement of account 10 days before the due date of each repayment after the first.

(2) An institution must contact a borrower and demand repayment if it has not received from the borrower within 15 days of a due date—

(i) A repayment;

(ii) A request for a deferment; or

(iii) A cancellation request form.

(3) An institution must demand repayment as follows:

(i) Within 15 days of a missed due date, the institution must contact the borrower by telephone or in writing to demand repayment (first overdue notice).

(ii) Within 30 days of the first overdue notice, it must contact the borrower again, by telephone or in writing, if there is no satisfactory response to the first notice (second overdue notice).

(iii) Within 15 days of the second overdue notice, if there is no satisfactory response, it must contact the borrower again—

(A) By telephone; or

(B) By mailgram or similar written communication that demonstrates a response rate higher than that for routine mail (third overdue notice).

(iv) Within 15 days of the third overdue notice, it must send the borrower the final demand letter if there is no satisfactory response to the third overdue notice. In this letter the institution must inform the borrower that the loan will be referred for collection or litigation if repayment, or a proper form, is not received within 30 days of the letter's date.

(v) If an institution accelerates a loan (makes the entire unpaid amount, including accrued interest and penalty charges, payable immediately), it must give the borrower advance, written notice. The notice may be given separately or in the final demand letter.

(4) An institution may omit any or all the overdue notices before the final demand letter if—

(i) The borrower's repayment history has been unsatisfactory, e.g., the borrower has often failed to repay or file proper forms on time or has previously received a final demand letter; or

(ii) The institution believes the borrower does not intend to repay the loan or file the proper form.

(5) The institution must maintain a list of borrowers with overdue payments, updated monthly.

(6) If mail is returned, an institution must conduct a thorough search to locate the borrower's address, including—

(i) Checking records in all appropriate institutional offices;

(ii) Checking telephone directories or information operators in the location of the borrower's last known address;

(iii) Telephoning the borrower if a number is found; and

(iv) Using the Department of Education's free skip-tracing service.

(b)(1) The Secretary considers billing and follow-up collection procedure costs (as required in paragraph (a)) to be routine administrative expenses that are NOT chargeable to the Fund.

(2) However, the costs of phone calls to the borrower are considered other collection costs that MAY be charged to the Fund.

(20 U.S.C. 424 and 1087cc)

§ 674.45 Address searches.

(a) An institution, unable to locate a borrower in spite of its efforts under § 674.44(a)(6), must either—

(1) Hire a commercial skip-tracing organization; or

(2) Attempt to locate the borrower with its own personnel.

(b) If the institution locates the borrower, it must first try to collect the overdue amount before referring the loan for collection or litigation.

(20 U.S.C. 424 and 1087cc)

§ 674.46 Collection and litigation procedures.

(a) If an institution is still unable to collect a payment after following the procedures under §§ 674.44 and 674.45, it must telephone or personally contact the borrower to determine why the borrower has not paid. If this final contact fails to obtain payment, the institution must—

(1) Hire a collection agency;

(2) Sue the borrower; or

(3) Use its own personnel to collect the amount due.

(b) If the institution uses a collection agency, the agency must—

(1) Be bonded in an amount covering the part of the Fund under its control at any particular time; or

(2) Deposit the collection funds, immediately upon receipt, in a bank account in the institution's name—a "lock-box" deposit.

(c) If the institution is unable to collect a payment after following the procedures in §§ 674.42-674.45 and paragraphs (a) and (b) of this section, it may refer the NDSL to the Secretary for collection.

(d) (1) An institution must sue a borrower or any proper endorser if collection efforts have failed and it determines that the borrower or endorser—

(i) Has assets that may cover all or most of the outstanding debts;

(ii) Has no known defense;

(iii) Can be located and easily served; and

(iv) Owes more than $500.

(2) The institution may sue the borrower even if the conditions of paragraph (c)(1) are not met.

(e) If the principal and interest outstanding on a loan are $10 or less, an institution may write it off.

(20 U.S.C. 424, 1087cc and 1087gg)

§ 674.47 Other collection and litigation costs.

(a) The Secretary considers the reasonable costs of carrying out §§ 674.45(a) and 674.46 and telephone costs in §§ 674.44(a), 674.45(b), and 674.48(b) to be "other collection costs" chargeable to the Fund. Collection costs paid by the borrower are NOT chargeable to the Fund.

(b)(1) For audit purposes, an institution must support "other collection costs" with financial statements, e.g., phone and collection agency bills.

(2) A collection agency's statement must list specific amounts collected and the amount it retains.

(c)(1) If an institution performs its own collections, the Secretary considers the institution's actual collection costs, including salaries of its personnel, to be "other collection costs";

(2) However, these costs may not exceed the costs that would be permitted if the institution used a collection agency.

(d) An institution's reasonable litigation costs, incurred in carrying out this subpart, may be charged to the Fund.

(20 U.S.C. 424 and 1087cc)

§ 674.48 Use of fiscal agent.

(a)(1) An institution is responsible for all decisions in administering an NDSL program, e.g., decisions about collecting, cancelling, or deferring loans.

(2) A fiscal agent may perform only ministerial acts.

(b) A billing service used by an institution to carry out billing procedures under § 674.44—

(1) May not deduct its fees from the amount it receives from borrowers;

(2) May telephone and perform skip-tracing activities to prevent a borrower from defaulting on a loan; and

(3) Must provide the institution with at least a monthly documentation of its charges for skip-tracing activities and telephone calls.

(20 U.S.C. 424 and 1087cc)

§ 674.49 Commonly owned billing service and collection agency.

If an institution uses a billing service to carry out § 674.44 (billing procedures), it may not use a collection agency that—

(a) Owns or controls the billing service;

(b) Is owned or controlled by the billing service; or

(c) Is owned or controlled by the same corporation, partnership, association, or individual that owns or controls the billing service.

(20 U.S.C. 1087cc)

§ 674.50 Bankruptcy of borrower.

(a) An institution must refrain from carrying out this subpart on a loan which has been discharged in bankruptcy.

(b) An institution may not write off a loan until it has received an official notice of the bankruptcy discharge and must keep the notice in the borrower's file to support its writeoff entry.

(c) If an institution receives a repayment from a borrower after a loan has been discharged, it must deposit that payment in its Fund.

(20 U.S.C. 424 and 1087cc)

Subpart D—Loan Cancellation

§ 674.51 Special definitions.

(a) *Academic year or its equivalent for elementary and secondary schools and special education:* One complete school year or two half years from different school years excluding summer sessions that are complete and consecutive and that generally fall within a 12-month period.

(b) *Academic year or its equivalent for institutions of higher education:* A period of time in which a full-time student is expected to complete—

(1) The equivalent of 2 semesters, 2 trimesters, or 3 quarters at an institution using credit hours; or

(2) At least 900 clock hours of training for each program at an institution using clock hours.

(c) *Elementary school:* A school that provides elementary education, including education below grade 1, as determined by—

(1) State law; or

(2) The Secretary, if the school is not in a State.

(d) *Handicapped children:* Children who require special education and related services because they are—

(1) Mentally retarded;

(2) Hard of hearing;

(3) Deaf;

(4) Speech impaired;

(5) Visually handicapped;

(6) Seriously emotionally disturbed;

(7) Orthopedically impaired;

(8) Specific learning disabled; or

(9) Otherwise health impaired.

(e) *Local educational agency:* An agency defined in section 1201(g) of the Act.

(f) *Secondary school:* (1) A school that provides secondary education, as determined by—

(i) State law; or

(ii) The Secretary, if the school is not in a State.

(2) However, State laws notwithstanding, secondary education does not include any education beyond grade 12.

(g) *State education agency:* (1) The State board of education; or

(2) An agency or official designated by the Governor or by State law as being primarily responsible for the State supervision of public elementary and secondary schools.

(h) *Teacher:* (1) A professional who provides direct and personal services to students for their educational development through—

(i) Direct classroom teaching; or

(ii) Non-teaching positions of an educational nature such as a librarian and a guidance counselor.

(2) A supervisor, administrator, researcher, or curriculum specialist is not a teacher unless he or she primarily provides direct and personal services to students.

(3) A teacher in an institution of higher education does not include a person teaching elementary or secondary education unless that person teaches a remedial education program specifically designed to prepare high school graduates for postsecondary education.

(i) *Title I children:* Persons of age 5 through 17 counted under section 111(c) of the Elementary and Secondary Education Act of 1965.

(20 U.S.C. 425, 1087ee, and 1141)

§ 674.52 Cancellation procedures.

(a) *Application for cancellation:* (1) To apply for cancellation, a borrower must complete and file a form, obtained from the lending institution, by the date the institution establishes.

(2) If a borrower fails to file the form on time, the institution must follow the billing procedures in § 674.44 for contacting the borrower.

(3) If the borrower still fails to file the form, the institution may determine that the loan is in default and require immediate repayment of the unpaid balance, accrued interest, and penalty charges.

(b) The institution that makes the loan decides whether a borrower is entitled to cancellation.

(c)(1) An institution may refuse cancellation for simultaneous teaching in two or more schools or institutions if it cannot easily determine that the teaching was full-time.

(2) However, cancellation must be granted if one school official certifies that a teacher worked full-time for a full academic year under his or her supervision.

(20 U.S.C. 425, 1087cc)

§ 674.53 Teacher cancellation—Defense loan.

The following rules apply to Defense loan borrowers:

(a) *Cancellation. Ten percent rate.* (1) An institution must cancel up to 50 percent of a borrower's Defense loan, plus the interest on the unpaid balance, for full-time teaching in—

(i) A public or other nonprofit elementary or secondary school;

(ii) An institution of higher education; or

(iii) An overseas Department of Defense elementary or secondary school.

(2) The cancellation rate is 10 percent of the original loan principal, plus the interest on the unpaid balance, for each complete year, or its equivalent, of teaching.

(b) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1) The institution must cancel the borrower's entire Defense loan, plus interest on the unpaid balance, for full-time teaching in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualifies for funds in that year under Title I of the Elementary and Secondary Education Act of 1965; and

(ii) The Secretary selects, after determining it to be a school with a high concentration of students from low-income families.

(2) (i) The Secretary will not select more than 25% of the eligible schools in a State for any year unless at least 50% of the enrollment of each school selected is made up of Title I children.

(ii) However, in making this calculation for Defense loans, the Secretary will use a low-income factor of $3,000.

(3) (i) The Secretary selects schools under subparagraph (1) based on a ranking by the State Education Agency.

(ii) The State Education Agency must base its ranking of the schools on objective standards and methods approved by the Secretary. These standards take into account the numbers and percentages of Title I children attending those schools.

(iii) For each academic year, the Secretary will notify participating institutions of the schools selected under this paragraph.

(4) The cancellation rate is 15 percent of the original loan principal, plus the interest on the unpaid balance, for each complete academic year, or its equivalent, of full-time teaching.

(5) Cancellation for full-time teaching under this paragraph is available only for teaching beginning with academic year 1966-67.

(c) *Cancellation for full-time teaching of the handicapped.* (1) The institution must cancel the borrower's entire Defense loan, plus interest, for full-time teaching of handicapped children in a public or other nonprofit elementary or secondary school system.

(2) The cancellation rate is 15 percent of the original loan principal, plus the interest on the unpaid balance, for each complete academic year, or its equivalent, of full-time teaching.

(3) Cancellation for full-time teaching under this paragraph is available only for teaching beginning with the academic year 1967-68.

(20 U.S.C. 425(b)(3))

§ 674.54 Teacher cancellation—Direct loan.

The following rules apply to Direct loan borrowers:

(a) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1) The institution must cancel the borrower's entire Direct loan, plus the interest on the loan, for full-time teaching in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualifies for funds, in that year, under Title I of the Elementary and Secondary Education Act of 1965; and

(ii) The Secretary selects after determining it to be a school in which at least 30 percent of the school's total enrollment is made up of Title I children.

(2) However, the Secretary will not select more than 50 percent of the schools in that State receiving Title I assistance.

(3) (i) The Secretary selects schools under subparagraph (1) based on a ranking by the State Education Agency.

(ii) The State Education Agency must base its ranking of the schools on objective standards and methods approved by the Secretary. These standards take into account the numbers and percentages of Title I children attending those schools.

(iii) For each academic year, the Secretary will notify participating institutions of the schools selected under this paragraph.

(b) *Cancellation for full-time teaching of the handicapped.* (1) The institution must cancel the borrower's entire Direct loan, plus the interest on the loan, for full-time teaching of handicapped children in a public or other nonprofit elementary or secondary school system.

(c) *Cancellation rates.* (1) To qualify for cancellation under paragraph (a) or (b) (low-income or handicapped), a borrower must teach full-time for a complete academic year, or its equivalent.

(2) Cancellation rates are—

(i) 15 percent of the original loan principal, plus the interest on the unpaid balance, for the first and second years of full-time teaching;

(ii) 20 percent of the original loan principal, plus the interest on the unpaid balance, for the third and fourth years of full-time teaching; and

(iii) 30 percent of the original loan principal, plus the interest on the unpaid balance, for the fifth year of full-time teaching.

(20 U.S.C. 1087ee)

§ 674.55 Cancellation for service in a Head Start program.

(a) An institution must cancel a borrower's entire Direct loan, plus the interest on the unpaid balance, for service as a full-time staff member in a "Head Start" program if—

(1) The program operates for a complete academic year, or its equivalent; and

(2) The borrower's salary does not exceed the salary of a comparable employee working in the local school district.

(b) The cancellation rate is 15 percent of the original loan principal, plus the interest on the unpaid balance, for each complete academic year, or its equivalent, of full-time teaching service.

(c) (1) "Head Start" is a preschool program carried out under section 222(a)(1) of the Economic Opportunity Act of 1964.

(2) "Full-time staff member" is a person regularly employed in a full-time professional capacity to carry out the educational part of a Head Start program.

(20 U.S.C. 1087ee)

§ 674.56 Cancellation for military service.

(a) *Cancellation on a Defense loan.* (1) An institution must cancel up to 50 percent of a Defense loan made after April 13, 1970, for the borrower's full-time active service starting after June 30, 1970, in the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard.

(2) The cancellation rate is 12½ percent of the original loan principal, plus the interest on the unpaid balance, for each complete year of consecutive service.

(b) *Cancellation on a Direct loan.* (1) An institution must cancel up to 50 percent of a Direct loan for service as a member of the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard in an area that qualifies for special pay under section 310 of Title 37 of the U.S. Code.

(2) The cancellation rate is 12½ percent of the original loan principal, plus the interest on the unpaid balance, for each complete year of qualifying service.

(c) The Secretary considers a borrower's loan deferment under § 674.34 to run concurrently with any period for which a cancellation for military service is granted.

(20 U.S.C. 425(b)(3) and 1087ee)

§ 674.57 Cancellation for death or disability.

(a) *Death*. An institution must cancel the unpaid balance of a borrower's Defense or Direct loan, including interest, if the borrower dies. The lending institution cancels the loan on the basis of a death certificate or other evidence of death that is conclusive under State law.

(b) *Permanent and total disability.* (1) An institution must cancel the unpaid balance of a Defense or Direct loan, including interest, if the borrower becomes permanently and totally disabled after receiving the loan. The lending institution decides whether to cancel the loan based on medical evidence supplied by the borrower or his or her representative.

(2) Permanent and total disability is the inability to work and earn money because of an impairment that is expected to continue indefinitely or result in death.

(c) *No Federal reimbursement.* No Federal reimbursement will be made to an institution for cancellation of loans due to death or disability.

(d) *Retroactive.* Cancellation for death or disability applies retroactively to all Defense and Direct loans whenever made.

(20 U.S.C. 425 and 1087dd and section 130(g)(2) of the Educational Amendments of 1976, Pub. L. 94-482)

§ 674.58 No cancellation for prior service—No repayment refunded—Cancellations not considered taxable income.

(a) No portion of a loan may be cancelled for teaching, Head Start, or military service if the borrower's service is performed before the date he or she signs the promissory note.

(b) No repayment may be refunded unless it was made because of institutional error.

(c) The amount of a loan and interest on a loan which is cancelled under Subpart D shall not be considered taxable income for purposes of the Internal Revenue Code of 1954.

(20 U.S.C. 425 and 1087ee; Pub. L. 96-374, Section 448(e), 94 Stat 1443)

§ 674.59 Reimbursement to institutions for loan cancellation.

(a) *Reimbursement for Defense loan cancellation.* (1) The Secretary pays an institution each award year its share of the principal and interest cancelled under § 674.53 or § 674.56(a).

(2) The institution's share of cancelled principal and interest is computed by the following ratio:

$$\frac{I}{I+F}$$

Where I is the institution's capital contribution to the Fund, and F is the Federal capital contribution to the Fund.

(b) *Reimbursement for Direct loan cancellation.* The Secretary pays an institution each award year the principal and interest cancelled from its student loan fund under §§ 674.54, 674.55, and 674.56(b). The institution must deposit this amount in its Fund.

(20 U.S.C. 428 and 1087ee)

APPENDIX A—ALLOTMENT OF FUNDS TO STATES FOR FISCAL YEAR 1972

Alabama	$4,329,888
Alaska	143,019
Arizona	3,025,951
Arkansas	2,457,919
California	30,963,291
Colorado	4,163,216
Connecticut	3,790,537
Delaware	663,468
District of Columbia	2,167,676
Florida	7,872,683
Georgia	4,919,990
Hawaii	1,137,046
Idaho	1,220,847
Illinois	14,264,322
Indiana	7,496,071
Iowa	5,075,628
Kansas	4,125,849
Kentucky	4,117 19
Louisiana	4,863,504

APPENDIX A—ALLOTMENT OF FUNDS TO STATES FOR FISCAL YEAR 1972—Continued

Maine	1,175,287
Maryland	4,453,186
Massachusetts	10,510,277
Michigan	12,724,387
Minnesota	6,340,123
Mississippi	3,292,103
Missouri	6,686,416
Montana	1,233,084
Nebraska	2,719,537
Nevada	443,641
New Hampshire	1,228,222
New Jersey	5,036,568
New Mexico	1,570,800
New York	23,755,497
North Carolina	6,796,494
North Dakota	1,339,610
Ohio	13,598,996
Oklahoma	4,489,951
Oregon	3,944,044
Pennsylvania	14,293,876
Rhode Island	1,501,312
South Carolina	2,631,093
South Dakota	1,322,457
Tennessee	5,330,199
Texas	15,388,640
Utah	2,976,511
Vermont	901,213
Virginia	4,928,348
Washington	5,811,589
West Virginia	2,695,336
Wisconsin	7,300,992
Wyoming	578,575
Canal Zone	19,503
Guam	50,368
Puerto Rico	2,114,959
Virgin Islands	18,082
Total	286,000,000

APPENDIX B—SAMPLE PROMISSORY NOTE

National Direct Student Loan Program

(Bracketed clause may be included at option of institution)

I, ————————————————

promise to pay to ————————, (hereinafter called the Lending Institution) located at ————————, the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below [together with all attorney's fees and other costs and charges necessary for the collection of any amount not paid when due].

I further understand and agree that:

General

I. All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, hereinafter called the Act and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note must be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Lending Institution.

Repayment

II. (1) Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF THREE PERCENT (3%)* on the unpaid balance except that no interest shall accrue during any period described in paragraph III (3). (A), (B) and (C).

(Bracketed clause must be included if the institution uses paragraph II(4))

(2) [Except as provided in paragraph II (4)] I promise to repay the principal, and the interest which accrues on it, over a period beginning 6 months after the date I cease to be at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the United States Secretary of Education (hereinafter called the Secretary), and ending, unless paragraph II(3) or III (3) (deferment) applies, 10 years later.

I may, however, request that the repayment period start on an earlier date.

I promise to repay the principal and interest over the course of the repayment period in EQUAL monthly, bimonthly or quarterly installments, as determined by the Lending Institution. However, if I request, repayments may be made in GRADUATED INSTALLMENTS determined in accordance with schedules approved by the Lending Institution and the Secretary. In either case, a schedule of repayment shall be attached to and made part of this note.

(3) Notwithstanding paragraph II(2), if I qualify as a low-income individual during the repayment period, the lending institution may, at my request, extend the repayment period for up to an additional 10 years or adjust any repayment schedule to reflect my income, or both.

(Bracketed paragraphs may be included at option of institution)

[(4) If the repayment schedule established under paragraph II(2) provides for repayment of principal and interest at a rate of less than $30 per month, I shall repay the total amount of this loan plus the interest thereon at the rate of $30 per month, which shall include repayment of principal and interest.

If I receive or have received National Direct or Defense Student Loans from other lending institutions, I shall repay this note at a monthly rate equal to not less than the amount by which $30 exceeds the total monthly rate of principal and interest repaid on the other loans.

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*For loans made after June 30, 1981, the annual percentage rate increases to four percent (4%).

A schedule of repayment will be attached to and made part of this note.

The Lending Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph 2 of this article.]

III. This note is also subject to the following conditions:

Prepayment

(1) I may at my option and without penalty prepay all or any part of the principal, plus the accrued interest thereon, at any time. Amounts I repay in the academic year in which the loan was made will be used to reduce the amount of the loan and will not be considered a prepayment. If I repay more than the amount due for any repayment period, the excess will be used to prepay principal unless I designate it as an advance payment of the next regular installment.

Default

(2)(A) If I fail to meet a scheduled repayment of any installment, the entire unpaid indebtedness including interest due and accrued thereon, plus any applicable penalty charges, will, at the option of the Lending Institution, become immediately due and payable.

(B) Further, I understand that if I default on my loan repayments and the loan is referred to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

Deferment

(3) Interest will not accrue, and installments need not be paid—

(A) while I am enrolled and in attendance as at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary or

(B) for a period not in excess of 3 years during which time I am—

(i) on full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard),

(ii) in service as a Volunteer under the Peace Corps Act, or

(iii) a VISTA volunteer under Title I—Part A of the Domestic Volunteer Service Act,

(iv) a full-time volunteer in a tax-exempt organization performing service comparable to the service performed by Peace Corps or ACTION agency volunteers,

(v) temporarily totally disabled as established by an affidavit of a qualified physician,

(vi) unable to secure employment because I am providing care required by my spouse who is so disabled, or

(vii) an officer on full-time active duty in the Commissioned Corps of the U.S. Public Health Service.

(C) for a period not in excess of two years during which time I am serving in an internship which is required in order that I may receive professional recognition required to begin my professional practice or service.

(D) The Lending Institution may, upon my application, defer or reduce any scheduled repayments if, in its opinion, extraordinary circumstances, such as prolonged illness or unemployment, prevent me from making such repayments. However, interest will continue to accrue.

Cancellation for Teaching

(4) I am entitled to have the entire amount of this loan plus the interest thereon cancelled if I undertake service.

(A) as a full-time teacher in a public or other non-profit elementary or secondary school which is in a school district of a local educational agency which is eligible for funds under Title I of the Elementary and Secondary Education Act of 1965 and which has been designated by the Secretary in accordance with the provisions of Section 465(a)(2) of the Higher Education Act as a school with a high enrollment of students from low-income families, or

(B) as a full-time teacher of handicapped children (including mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, children with specific learning disabilities, or other health impaired children who by reason thereof require special education and related services) in public or other nonprofit elementary or secondary school system.

This loan will be cancelled at the following rates: 15 percent of the total principal amount of the loan plus interest on the unpaid balance will be cancelled for the first and second complete academic years of that teaching service; 20 percent of the total principal amount plus interest on the unpaid balance for the third and fourth complete academic years of that teaching service; and 30 percent of the total principal amount plus interest on the unpaid balance for the fifth complete academic year of that teaching service.

Head Start Cancellation

(5) I am entitled to have the entire amount of this loan plus the interest thereon cancelled if I undertake service as a full-

time staff member in a Head Start program if

(A) that Head Start program is operated for a period which is comparable to a full school year in the locality, and

(B) my salary is not more than the salary of a comparable employee of the local educational agency.

Cancellation will be at the rate of 15 percent of the total principal amount plus the interest on the unpaid balance for each complete school year or the equivalent of service in a Head Start program.

Head Start is a preschool program carried out under section 222(a)(1) of the Economic Opportunity Act of 1964.

Military Cancellation

(6) If I serve as a member of the Armed Forces of the United States, up to 50 percent of the principal amount of this loan plus the interest thereon will be cancelled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance for each complete year of service in an area of hostilities that qualifies for special pay under section 310 of title 37 of the United States Code.

Death and Disability Cancellation

(7) If I should die or become permanently and totally disabled, the entire amount of this loan plus the interest thereon shall be cancelled.

Address Change

(8) I am responsible for informing the Lending Institution of any change or changes in my address.

Penalty Charge

(Bracketed paragraphs may be included at option of institution)

[(9) If I fail to make timely payment of all or any part of a scheduled installment, or if I am eligible for deferment or cancellation under paragraphs III (3), (4), (5), or (6), but fail to submit the appropriate request on time, I promise to pay the charge assessed against me by the Lending Institution.

No charge may exceed (1) where the loan is repayable in monthly installments, $1 for the first month or part of a month by which the installment or evidence is late, and $2 for each month or part of a month thereafter; or (2) in the case of a loan which is repayable in bimonthly or quarterly installments, $3 and $6, respectively, for each installment interval or part thereof by which the installment or evidence is late.

If the Lending Institution elects to add the assessed charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.]

Assignment

IV. This note may be assigned by the Lending Institution only (A) to another institution upon my transfer to that institution if that institution is participating in this program (or, if not so participating, is eligible to do so and is approved by the Secretary for that purpose) or (B) to the United States or to an institution approved by the Secretary. The provisions of this note that relate to the Lending Institution shall, where appropriate, relate to an assignee.

Prior Loans

V. I hereby certify that I have listed below all of the National Direct Student Loans (or National Defense Student Loans) I have obtained at other institutions. (If no prior loans have been received, state "None.")

Schedule of National Direct Student Loans and National Defense Student Loans at other institutions

	Amount (in dollars)	Date	Institution
1			
2			
3			
4			

VI. SCHEDULE OF ADVANCES

	Amount (in dollars)	Date	Signature of maker
1			
2			
3			
4			

Signature ————————————

Date ————, 19——

Permanent address ————————

(Street or Box Number, City, State, and Zip Code)

Caveat—This note is to be executed without security and without endorsement, except that if I am a minor and this note would not, under the law of the State in which the Lending Institution is located, create a binding obligation, either security or endorsement may be required. The Lending Institution shall supply a copy of this note to me.

Signature of endorser ————————

Date ————, 19——

Permanent Address ————————

(Street or Box Number, City, State, and Zip Code)

APPENDIX C—EXAMPLES FOR COMPUTING PENALTY CHARGES—6 MONTHS

	Jan. 2	Feb. 2	Mar. 2	Apr. 2	May 2	June 2	Total per payment
Monthly:							
1st past due	$1	$1-$2	$3+$2	$5+$2	$7+$2	$9+$2	$11
2d past due		1	1+2	3+2	5+2	7+2	9
3d past due			1	1+2	3+2	5+2	7
4th past due				1	1+2	3+2	5
5th past due					1	1+2	3
6th past due						1	1
Total, all payments							36
Bimonthly:							
1st past due	3		3+3		6+3		9
2d past due			3		3+3		6
3d past due					3		3
Total, all payments							18
Quarterly:							
1st past due	6			6+6			12
2d past due				6			6
Total, all payments							18

APPENDIX D—[RESERVED]

PART 675—COLLEGE WORK-STUDY AND JOB LOCATION AND DEVELOPMENT PROGRAM

NOTE: An asterisk (*) indicates provisions that are common to Part 674, 675 and 676. The use of asterisks will assure participating institutions that a provision of one regulation is identical to the corresponding provisions in the other two.

Subpart A—College Work-Study Program

Sec.
675.1 Purpose and identification of common provisions.
675.2 Definitions.
675.3 Allotment and reallotment.
675.4 Allocation, reallocation, and payment to institutions.
675.5 Application.
675.6 Funding procedures.
675.7 Application review—approval of request.
675.8 Institutional agreement.
675.9 Student eligibility.
675.10 Special sessions.
*675.11 Allowable costs of attendance.
*675.12 Expected family contribution.
*675.13 Approved need analysis systems.
*675.14 Coordination of student financial aid programs, award amount, and overaward.
675.15 Coordination with BIA grants.
675.16 Payments to students.
*675.17 Federal interest in allocated funds.
675.18 Use of funds.
675.19 Fiscal procedures and records.
675.20 Maintenance of effort.
675.21 Transfer of funds.
675.22 Project eligibility.
675.23 Eligible jobs.
675.24 Establishment of wage rates under CWS.
675.25 Earnings applied to cost of attendance.
675.26 CWS Federal share limitations.
675.27 Nature and source of institutional share.
675.28 Community Service Learning Program.

Subpart B—Job Location and Development Program

675.31 Purpose.
675.32 Federal contribution allowed.
675.33 Allowable costs.
675.34 Federal share of allowable costs.
675.35 Institutional share.
675.36 Multi-institutional job location and development project; arrangements with nonprofit organizations.
675.37 Restrictions.
675.38 Agreement.
675.39 Maintenance of effort.
675.40 Procedures and records.
675.41 Termination and suspension.

APPENDIX A—ALLOTMENT OF FUNDS TO STATES FOR FISCAL YEAR 1972
APPENDIX B—MODEL OFF-CAMPUS AGREEMENT

AUTHORITY: Sec. 441-448 of Pub. L. 89-329, Title IV, 79 Stat. 1219, as amended (42 U.S.C. 2751-2756b), unless otherwise noted.

SOURCE: 46 FR 5266, Jan. 19, 1981, unless otherwise noted.

Subpart A—College Work-Study Program

§ 675.1 Purpose and identification of common provisions.

(a) The College Work-Study Program (CWS) provides part-time employment to students attending institutions of higher education who need the earnings to help meet their costs of postsecondary education.

(b) Provisions in these regulations that are common to all campus-based regulations are identified with an asterisk.

(42 U.S.C. 2751-2756b unless otherwise noted)

§ 675.2 Definitions.

The following definitions are contained in Subpart A of the Student Assistance General Provisions, 34 CFR Part 668;

Ability to benefit;

Institution of higher education (including public or private nonprofit institution of higher education, proprietary institution of higher education, and postsecondary vocational institution);

One-year training program;

Recognized equivalent of a high school diploma; and

Six-month training program.

Other definitions used in this part are:

**Academic year:* A period of time in which a full-time student is expected to complete—

(a) The equivalent of at least 2 semesters, 2 trimesters, or 3 quarters at an institution using credit hours; or

(b) At least 900 clock hours of training for each program at an institution using clock hours.

Act: Title IV-C of the Higher Education Act of 1965 (HEA).

**Award year:* The period of time between July 1 of one year and June 30 of the following year.

**Campus Based Programs:* (a) The National Direct Student Loan Program (NDSL-34 CFR Part 674);

(b) The College Work-Study Program (CWS-34 CFR Part 675); and

(c) The Supplemental Educational Opportunity Grant Program (SEOG-34 CFR Part 676).

**Clock Hour:* The equivalent of—

(a) A 50 to 60 minute class, lecture, or recitation; or

(b) A 50 to 60 minute faculty supervised laboratory, shop training, or internship.

Cooperative Education Program: A program authorized by Title VIII of the Higher Education Act.

**Dependent student:* A student who does not qualify as an independent student (see independent student).

Eligible program: A program of education or training that—

*(a) Admits as regular students only persons who—

(1) Have a high school diploma;

(2) Have a General Education Certificate (GED) or a State certificate received after passing a State authorized examination which the State recognizes as the equivalent of a high school diploma; or

(3) Are beyond the age of compulsory school attendance in the State in which the institution is located, and have the ability to benefit from the education or training offered.

(b)(1) Leads to a bachelor, associate, undergraduate, graduate or professional degree;

(2) Is at least a 2 year program that is acceptable for full credit toward a bachelor degree;

(3) Is at least a 1 year program leading to a certificate or degree that prepares a student for gainful employment in a recognized occupation; or

(4) Is, for a proprietary institution or a postsecondary vocational institution, at least a six-month program leading to a certificate or degree which prepares students for gainful employment in a recognized occupation.

**Expected family contribution:* The amount a student and his or her spouse and family are expected to pay toward his or her cost of attendance.

**Financial need:* The difference between a student's cost of attendance and his or her expected family contribution.

Graduate or professional student: A student enrolled in an academic program of study above the baccalaureate level at an institution of higher education, including—

(a) A program leading to a first professional degree if the institution requires at least 3 years of study at the college level for entrance into the program; and

(b) The fifth and later years of any program requiring more than 4 years of study at the college level.

**Guaranteed Student Loan Program (GSL):* The student loan program authorized by Title IV-B of the HEA.

(20 U.S.C. 1071 et seq.)

Half-time graduate or professional student: An enrolled graduate or professional student who is carrying a half-time academic work load as determined by the institution according to its own standards and practices.

**Half-time undergraduate student:* An enrolled undergraduate student who is carrying a half-time academic work load as determined by the institution according to its own standards and practices. However, the institution's half-time standards must equal or exceed the equivalent of the following minimum requirements:

(a) 6 semester hours or quarter hours per academic term in an institution using standard semester, trimester, or quarter systems.

(b) 12 semester hours or 18 quarter hours per academic year for an institution using credit hours to measure progress, but not using a standard semester, trimester, or quarter system, or the prorated equivalent for a program of less than 1 year.

(c) 12 clock hours per week for an institution using clock hours.

(d) 12 clock hours of preparation per week for a student enrolled in a program of study by correspondence.

Independent student (effective through June 30, 1981):

(a) A student who for 1979 and 1980—

(1) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes by his or her parent(s);

(2) Has not received and will not receive financial assistance of more than $750 in each year from his or her parent(s); and

(3) Has not lived and will not live for more than six weeks in each year in the home of his or her parent(s).

(b) If a student's mother and father are divorced or separated, only one parent will be considered to be the parent of the student for purposes of applying the criteria in paragraph (a) of this section.

To determine that parent—

(1) Choose the parent with whom the student resided for the greater portion of the 12 month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(2) If the preceding criterion does not apply, choose the parent who provided the greater portion of the student's support for the 12 month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(3) If neither of the preceding criteria apply, choose the parent who provided the greater support for the period commencing January 1 of the calendar year which immediately precedes the first calendar year of the award period and ending 12 months prior to the date of application to have an expected family contribution determined under an approved need analysis system.

(c) If either of the parents have died, the institution shall consider only the surviving parent as the parent for purposes of applying the criteria in paragraph (a) of this definition. If both parents have died, the institution shall not consider either parent.

**Independent student (effective July 1, 1981 through June 30, 1982):*

(a) A student who for 1980 and 1981—

(1) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes by his or her parent(s);

(2) Has not received and will not receive financial assistance or more than $1,000 in each year from his or her parent(s); and

(3) Has not lived and will not live for more than six weeks in each year in the home of his or her parent(s).

(b) If a student's mother and father are divorced or separated, only one parent will be considered to be the parent of the student for purposes of applying the criteria in paragraph (a) of this section. To determine that parent—

(1) Choose the parent with whom the student resided for the greater portion of the 12 month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(2) If the preceding criterion does not apply, choose the parent who provided the greater portion of the student's support for the 12 month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(3) If neither of the preceding criteria apply, choose the parent who provided the greater support for the period commencing January 1 of the calendar year which immediately precedes the first calendar year of the award period and ending 12 months prior to the date of application to have an expected family contribution determined under an approved need analysis system.

(c) If either of the parents have died, the institution shall consider only the surviving parent as the parent of the student. If both parents have died, the institution shall not consider either parent.

**Independent student (effective July 1, 1982):*

(a) A single student who for 1981 and 1982—

(1) Has not lived and will not live for more than six weeks in either year in the home of his or her parent(s);

(2) Has not been claimed and will not be claimed as a dependent for Federal income tax purposes by his or her parent(s); and

(3) Has not received and will not receive financial assistance of more than $750 in either year from his or her parent(s); or

(b) A married student who for 1982—

(1) Has not lived and will not live for more than six weeks in the home of his or her parent(s);

(2) Has not been claimed and will not be claimed as a dependent for Federal income tax purposes by his or her parent(s); and

(3) Has not received and will not receive financial assistance of more than $750 from his or her parent(s).

(c) If a student's mother and father are divorced or separated, only one parent will be considered to be the parent of the student for purposes of applying the criteria in paragraphs (a) and (b) of this section. To determine that parent—

(1) Choose the parent with whom the student resided for the greater portion of the 12 month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(2) If the preceding criterion does not apply, choose the parent who provided the greater portion of the student's support for the 12 month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(3) If neither of the preceding criteria apply, choose the parent who provided the greater support for the period commencing January 1 of the calendar year which immediately precedes the first calendar year of the award period and ending 12 months prior to the date of application to have an expected family contribution determined under an approved need analysis system.

(d) If either of the parents have died, the institution shall consider only the surviving parent as the parent for purposes of applying the criteria in paragraphs (a) and (b) of this section. If both parents have died, the institution shall not consider either parent.

**Legal guardian:* An individual appointed by a court to be a legal guardian of a person and who is specifically required by the court to use his or her financial resources to support that person.

National Direct Student Loan Program (NDSL): The student loan program authorized by Title IV-E of the HEA

(20 U.S.C. 1087aa-1087ii)

**National of the United States:* A citizen of the United States or a noncitizen who owes permanent allegiance to the United States.

(8 U.S.C. 1101(a)(22))

**Nonprofit institution:* An institution owned and operated by one or more nonprofit corporations or associations where no part of the net earnings of the institution benefits any private shareholder or individual.

(20 U.S.C. 1141(c))

**Parent:* Parent means the student's mother, father, or legal guardian. An adoptive parent is considered to be the student's mother or father.

**Parent Loans for Undergraduate Students Program (PLUS):* The parent loan program authorized by Title IV-B of the HEA.

**Payment period:* A semester, trimester, or quarter. For an institution not using those academic periods, it is the period between the beginning and the midpoint or between the midpoint and the end of an academic year. A payment period is not the payroll period discussed in § 675.16.

**Pell Grant Program:* The grant program, formerly known as the Basic Educational Opportunity Grant Program, authorized by Title IV A-1 of the HEA.

**Regular student:* A person who is enrolled or accepted for enrollment, in an eligible program at an institution of higher education for the purpose of obtaining a degree or certificate.

**Secretary:* The Secretary of the Department of Education, or an official or employee of the Department acting for the Secretary under a delegation of authority.

**State:* The States of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(20 U.S.C. 1141(b))

**State Student Incentive Grant Program (SSIG):* The program authorized by Title IV-A-3 of the HEA.

(20 U.S.C. 1070c et seq.)

Supplemental Educational Opportunity Grant Program (SEOG): The grant program authorized by Title IV-A-2 of the HEA.

(20 U.S.C. 1070b *et. seq.*)

(42 U.S.C. 2751-2756b, unless otherwise noted)

[46 FR 5266, Jan. 19, 1981, as amended at 47 FR 743, Jan. 6, 1982]

§ 675.3 Allotment and reallotment.

(a) *Initial allotment.* The Secretary allots one percent of the CWS appropriation according to section 442(a) of the Act. The Secretary allots an additional amount according to section 442(f) of the Act.

(b) *Initial allotment to States.* (1) The Secretary allots 90% of the amount remaining according to the Act, 442(b). (If necessary the Secretary allots additional amounts to each State to make that State's allotment equal to its allotment for fiscal year 1972. The 1972 allotments are shown in Appendix A.)

(2) The Secretary allots the remaining amount so that each institution in each State receives the CWS funds computed under § 675.6 or § 675.7.

(c) *Reallotment.* (1) The Secretary reallots the amount of a State's allotment that exceeds the approved requests of institutions in that State.

(2) The Secretary reallots those funds among the remaining States according to institutional need for CWS funds as computed under § 675.6 or § 675.7.

(42 U.S.C. 2752)

§ 675.4 Allocation, reallocation, and payment to institutions.

(a) *Definition.* As used in this section and in § 675.6, "current year" means the 12-month period ending on the June 30 immediately following the closing date for filing a CWS application.

(b) *Allocation.* The Secretary distributes CWS funds according to §§ 675.6 and 675.7.

(c) *Reallocation.* (1)(i) If an institution anticipates not using all its allocated funds by the end of an award year and if it does not wish to carry those funds forward into the next award year, it must specify the anticipated unused amount to the Secretary, who reduces the institution's allocation accordingly.

(ii) Other institutions may apply for those funds on the form and at the time specified by the Secretary.

(iii) The Secretary distributes those funds to applicant institutions in accordance with paragraph (c)(2) of this section.

(2)(i) If the funds that become available under paragraph (c)(1) of this section come from the State's initial allotment under § 675.3(b)(1), the Secretary reallocates those funds equitably to other institutions in that State. The Secretary reallots those funds that are not needed to maintain the State's initial allotment, and any funds that do not come from that initial allotment, in accordance with paragraphs (c)(2) (ii), (iii), (iv), and (v) of this section.

(ii) The Secretary reallocates fifty (50) percent of any remaining funds to eligible applicant institutions to initiate, improve, or expand cooperative education programs conducted in accordance with title VIII of the HEA.

The Secretary distributes these funds to eligible applicant institutions according to the following formula:

An eligible applicant institution's share = The number of students assisted under the cooperative education program authorized by title VIII for the fiscal year enrolled in the eligible institution which applied for reallocated funds./The number of such students for such year enrolled in all eligible institutions which applied for reallocated funds. × Funds available for distribution.

(iii) The Secretary reallocates the remaining fifty (50) percent to institutions whose students have suffered financial hardships as a result of natural disasters within the preceding 12 months.

(iv) If any funds remain, the Secretary then increases awards to institutions whose awards are less than their national fair share determined under § 675.6. The Secretary calculates each applicant's increase as follows:

Institution's remaining shortfall/remaining shortfall of all applicants for reallocation × remaining amount available for reallocation

(An institution's remaining shortfall is the difference between its national fair share (see § 675.6(g)(4)) and its award calculated in § 675.6 and this section through paragraph (c)(2)(iii).)

(v) If any funds still remain, the Secretary reallocates the funds in a manner that best carries out the purposes of this part.

(d) *Payments to institutions.* The Secretary allocates funds for a specific period of time. The Secretary pays funds to an institution in advance or by reimbursement. The Secretary bases the amount to be paid on periodic fiscal reports.

(42 U.S.C. 2752 and 2756)

§ 675.5 Application.

(a) To participate in the CWS program, an institution must file an application with the Secretary before an annually established closing date.

(b) The application must be on a form approved by the Secretary and contain information needed to determine the institution's allocation under § 675.6 and 675.7.

(c) The application must contain the information needed to determine whether the institution is complying with the maintenance of effort requirements under § 675.20.

(42 U.S.C. 2756)

§ 675.6 Funding procedure.

(a) *General.* (1) Each institution applying for CWS funds receives an amount computed in the following three stages:

(i) A "conditional guarantee";

(ii) A State increase based on its "fair share" of the State apportionment; and

(iii) A national increase based on its "fair share" of the national appropriation.

(2) Definitions—As used in this section—

(i) "Base year" means the 12-month period ending on the June 30 preceding the closing date for filing a CWS application;

(ii) "Current year" is defined in § 675.4.

(b) *Conditional guarantee.* The Secretary computes a conditional guarantee in the following way:

(1) An institution that participated in the CWS program in the base year receives a conditional guarantee equal to its 1979-80 award year expenditures unless it suffers a substantial decline in enrollment.

(2) An institution applying to participate in the CWS program for the first time receives a conditional guarantee equal to the greater of—

(i) $5,000; or

(ii) 90 percent of the average CWS base year expenditure per student in eligible institutions offering comparable programs of instruction, multiplied by the applicant institution's base year enrollment.

(3) An institution applying to participate in the CWS program for the second time receives a conditional guarantee equal to the greatest of—

(i) $5,000;

(ii) 90 percent of the average CWS base year expenditure per student in eligible institutions offering comparable programs of instruction, multiplied by the applicant institution's base year enrollment; or

(iii) 90 percent of its current year allocation.

(c) *Self-help need of an institution.* (1) The Secretary allocates additional funds to an institution under paragraph (f) (State increase) and paragraph (g) (National increase) based in part on the institution's self-help need. Self-help need is the need for funds from work and loan sources. The institution's self-help need is the sum of the self-help need of its eligible graduate students and the self-help need of its eligible undergraduate students.

(2) The Secretary calculates the self-help need of an institution's eligible graduate students in accordance with paragraph (d) of this section and the self-help need of its eligible undergraduate students in accordance with paragraph (e) of this section.

(3) As used in paragraphs (d) and (e) of this section:

(i) *Average cost of attendance* means the attendance costs for undergraduate and graduate students. These costs include tuition, fees, standard living expenses, books, and supplies. (The institution reports its total tuition and fee revenues, and the Secretary uses this amount to determine the average cost of attendance.)

(ii) *Eligible students* means for award year 1981-82 students who—

(A) Were enrolled as regular students in good standing on at least a half-time basis in an eligible program during the base year;

(B) Met program regulation requirements for citizenship or residency in the United States for the base year; and

(C) Applied for financial assistance for the base year, and for whom the institution has on file taxable and non-taxable income data and all the other information necessary to perform a needs analysis using a methodology approved by the Secretary.

(d) *Self-help need of eligible graduate students.* To determine the self-help need of an institution's eligible graduate students, the Secretary—

(1) Establishes various income categories for dependent and independent graduate students;

(2) Establishes an expected family contribution (EFC) for each income category of dependent and independent graduate students, using a need analysis method approved under § 675.13;

(3) Determines the average cost of attendance for all graduate students;

(4) Subtracts from the average cost of attendance for all graduate students, the computed EFC for each income category of dependent students and each income category of independent students. However, the average cost of attendance minus the EFC for any income category may not be less than zero;

(5) Multiplies those amounts by the number of eligible students in each category;

(6) Adds the amounts obtained for each income category of dependent students and each income category of independent students; and

(7) Totals those two amounts.

(e) *Self-help need of eligible undergraduate students.* To determine the self-help need of an institution's eligible undergraduate students, the Secretary—

(1) Establishes various income categories for dependent and independent undergraduate students;

(2) Establishes an EFC for each income category of dependent and independent undergraduate students, using a need analysis method approved under § 675.13;

(3) Computes 25 percent of the average cost of attendance for all undergraduate students;

(4) Multiplies the number of eligible dependent students in each income category by the lesser of—

(i) 25 percent of the average cost of attendance for all undergraduate students; or

(ii) The average cost of attendance for all undergraduate students minus the EFC determined under paragraph (e)(2) of this section for that income category. However, the average cost of attendance minus the EFC may not be less than zero;

(5) Adds the amounts obtained for each income category of dependent students;

(6) Multiplies the number of eligible independent students in each income category by the lesser of—

(i) 25 percent of the average cost of attendance of all undergraduate students; or

(ii) The average cost of attendance for all undergraduate students minus the EFC determined under paragraph (e)(2) of this section for that income category. However, the average cost of attendance minus the EFC may not be less than zero;

(7) Adds the amounts obtained for each income category of independent students; and

(8) Adds the amounts obtained under paragraphs (e) (5) and (7) of this section.

(f) *State increase.* (1) For any year the Secretary increases awards to institutions in a State ("State increase") if the combined conditional guarantees of all institutions in that State are less than the State's allotment under § 675.3.

(2) The Secretary calculates an institution's State increase according to the following formula—

Institution's State increase = its State shortfall/State shortfalls of all institutions in State × CWS funds available for State shortfall

(3) As used in the formula in paragraph (f)(2) of this section—

(i) "CWS funds available for State shortfall" is calculated by subtracting from the State allotment, the conditional guarantees of all institutions in the State.

(ii) An institution's "State shortfall" is calculated by subtracting from an institution's State fair share its conditional guarantee.

(iii) An institution's "State fair share" is calculated as follows—

Institution's State fair share = its self-help need/self-help need of all institutions in the State applying for CWS funds × State allotment for CWS

(g) *National increase.* (1) For any year the Secretary will further increase awards to institutions ("national increase") if the sum of the conditional guarantees and State increases awarded to institutions is less than the CWS appropriation for that year.

(2) The Secretary calculates an institution's national increase according to the following formula—

Institution's national increase = its national shortfall/national shortfall of all institutions × CWS funds available for national shortfall

(3) As used in the formula in paragraph (g)(2) of this section—

(i) "CWS funds available for national shortfall" is calculated by subtracting from the CWS appropriation the conditional guarantees and State increases of all institutions.

(ii) An institution's national shortfall is calculated by subtracting from its "national fair share", its conditional guarantee and State increase.

(4) An institution's "national fair share" is calculated as follows—

Institution's national fair share = its self-help need/self-help need of all institutions applying for CWS × CWS appropriation

(h) No institution may receive more CWS funds than it requests.

(42 U.S.C. 2756)

The following charts show the income categories and calculations for eligible graduate students and for eligible undergraduate students:

1—Income	2—Expected family contribution	3—Average cost	4—Average cost less expected family contribution	5—Number of eligible students	6—Self-help need, column 4 times column 5
Determination of Self-Help Need for Eligible Dependent Graduate Students					
0 to $2,999					
$3,000 to $5,999					
$6,000 to $8,999					
$9,000 to $11,999					
$12,000 to $14,999					
$15,000 to $17,999					
$18,000 to $20,999					
$21,000 to $23,999					
$24,000 to $26,999					
$27,000 to $29,999					
$30,000 to $32,999					
$33,000 to $35,999					
$36,000 to $38,999					
$39,000 to $41,999					
$42,000 to $44,999					
$45,000 and over					$.
7 Total self-help need for dependent graduate students					4.
Determination of Self-Help Need for Eligible Independent Graduate Students					
0 to $999					
$1,000 to $1,999					
$2,000 to $2,999					
$3,000 to $3,999					
$4,000 to $4,999					
$5,000 to $5,999					
$6,000 to $6,999					
$7,000 to $7,999					
$8,000 to $8,999					
$9,000 to $9,999					
$10,000 to $10,999					
$11,000 to $11,999					
$12,000 to $12,999					
$13,000 to $13,999					
$14,000 to $14,999					
$15,000 and over					
7 Total self-help need for independent graduate students					$.

Summary

1	Total self-help need for dependent graduate students	$.
2	Total self-help need for independent graduate students	$.
3	Total self-help need for all graduate students (1 plus 2)	$.

BEST DOCUMENT AVAILABLE

DETERMINATION OF SELF-HELP NEED FOR ELIGIBLE DEPENDENT UNDERGRADUATE STUDENTS

1—Income	2—Expected family contribution	3—25 percent average cost	4—Average cost less expected family contribution	5—Number of eligible students	6—Need: Lesser of column 3 times column 5 or column 4 times column 5
0 to $2,999					
$3,000 to $5,999					
$6,000 to $8,999					
$9,000 to $11,999					
$12,000 to $14,999					
$15,000 to $17,999					
$18,000 to $20,999					
$21,000 to $23,999					
$24,000 to $26,999					
$27,000 to $29,999					
$30,000 to $32,999					
$33,000 to $35,999					
$36,000 to $38,999					
$39,000 to $41,999					
$42,000 to $44,999					
$45,000 and over					

7 Total self-help need for dependent undergraduate students $

DETERMINATION OF SELF-HELP NEED FOR ELIGIBLE INDEPENDENT UNDERGRADUATE STUDENTS

0 to $999					
$1,000 to $1,999					
$2,000 to $2,999					
$3,000 to $3,999					
$4,000 to $4,999					
$5,000 to $5,999					
$6,000 to $6,999					
$7,000 to $7,999					
$8,000 to $8,999					
$9,000 to $9,999					
$10,000 to $10,999					
$11,000 to $11,999					
$12,000 to $12,999					
$13,000 to $13,999					
$14,000 to $14,999					
$15,000 and over					

7 Total self-help need for independent undergraduate students $

SUMMARY

1 Total self-help need for dependent undergraduate students $
2 Total self-help need for independent undergraduate students $
3 Total self-help need for all undergraduate students (1 plus 2) $

BEST DOCUMENT AVAILABLE

§ 675.7 Application review—approval of request.

(a) An institution may request a review of the amount it is scheduled to receive under § 675.6.

(b) A National Review Panel appointed by the Secretary reviews each institution's request. The panel consists of student financial aid administrators and Education Department personnel.

(c) In setting an award amount, the Secretary considers the panel's recommendations and its reasons for the recommendations.

(d) The Secretary sets an award amount based on procedures in § 675.6 and the review panel's recommendations.

(42 U.S.C. 2756)

§ 675.8 Institutional agreement.

To participate in the CWS program, an institution of higher education must enter into an agreement with the Secretary. The agreement provides that the institution will—

(a) Use the funds it receives solely for the purposes specified in this part;

(b) Administer the CWS program in accordance with The Act, the provisions of this part and the Student Assistance General Provisions, 34 CFR Part 668;

(c) Make non-CWS institutional jobs reasonably available to the extent of available funds to all students in the institution who want to work; and

(d) Award CWS employment, to the maximum extent practicable, which will complement and reinforce each recipient's educational program or career goals.

(42 U.S.C. 2753 and 20 U.S.C. 1094)

§ 675.9 Student eligibility.

(a) *Eligibility.* A student at an institution of higher education is eligible for part-time employment under CWS if the student—

*(1) Is a regular student;

(2) Is enrolled or accepted for enrollment in an eligible program as a graduate or undergraduate student at that institution;

*(3) (i) Is a U.S. citizen or National;

(ii) Is a permanent resident of the U.S.;

(iii) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands;

*(4) Has financial need;

*(5) Is maintaining satisfactory progress in the course of study he or she is pursuing according to the standards and practices of that institution;

*(6) Does not owe a refund on a Pell Grant, Supplemental Grant, or State Student Incentive Grant received to meet the cost of attending that institution; and

*(7) Is not in default on any National Defense/Direct Student Loan, Guaranteed Student Loan, or Parent Loans for Undergraduate Students received to meet the cost of attending that institution.

*(b) *Member of a religious order—financial need.* The Secretary considers that a member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education has no financial need if that religious order—

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3) (i) Directs the member to pursue the course of study; or

(ii) Provides subsistence support to its members.

(c) *Institutional responsibility for determining eligibility.* The institution is responsible for determining the eligibility of the students participating in its program whether the students work on- or off-campus.

(d) *Selection.* (1) An institution may use not more than 10 percent of its allocation to pay the compensation of eligible students who are enrolled as less than half-time students.

(2) An institution must make employment under CWS reasonably available (to the extent of available funds) to all eligible students who demonstrate need.

(3) The institution's selection procedures must be—

(i) Uniformly applied;

(ii) In writing; and

(iii) Maintained in the files of the student financial assistance office.

(4) The institution must maintain on file all CWS employment applications for the period specified in § 675.19(c)(2).

(e) *Determination of satisfactory progress.* (1) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses itself BEFORE the end of the payment period, the institution may give a CWS job to the student for the entire period.

(2) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses itself AFTER the end of the payment period, the institution may NOT provide the student employment for that period OR make adjustments in subsequent financial aid payments to compensate for the loss of aid for that period.

(f) *Overpayment of grants.* Conditions under which an institution may allow a student who is overpaid a grant to continue his or her CWS job;

(1) *Overpayment of a Pell Grant.* If an institution makes an overpayment of a Pell Grant to a student, it may continue to employ that student if—

(i) The student is otherwise eligible; and

(ii) It can eliminate the overpayment in the award year in which it occurred by adjusting the subsequent Pell Grant payments for that award year.

(2) *Overpayment of a Pell Grant due to institutional error.* If the institution makes an overpayment of a Pell Grant as a result of its own error and cannot correct it as specified in subparagraph (1), it may continue to make payments to that student if the student—

(i) Is otherwise eligible; and

(ii) Acknowledges in writing the amount of overpayment and agrees to repay it in a reasonable period of time.

(3) *Overpayment of an SEOG.* An institution may continue to employ a student who receives an overpayment on an SEOG if—

(i) The student is otherwise eligible; and

(ii) It can eliminate the overpayment by adjusting financial aid payments (other than Pell Grants) in the same award year in which the overpayment occurred.

(4) *Definition.* Overpayment of a grant means that a student's grant payments are greater than the amount he or she is entitled to receive.

*(g) *Bankruptcy.* The Secretary does not consider a loan made under the National Defense Student Loan, National Direct Student Loan, Guaranteed Student Loan, or Parent Loans for Undergraduate Students Program that is discharged in bankruptcy to be in default for purposes of this section.

(1) *Guaranteed loan and Parent Loans for Undergraduate Students (PLUS).* An institution may provide CWS employment to a student who is in default on a Guaranteed Student Loan or a PLUS if the Secretary (for a Federally insured loan) or a guarantee agency (for a loan insured by that guarantee agency) determines that the student has made satisfactory arrangements to repay the defaulted loan.

(2) *National Defense/Direct Student Loan.* An institution may provide CWS employment to a student who is in default on a National Defense/Direct Student Loan made at that institution if the student has made arrangements, satisfactory to the institution, to repay the loan.

(h) *Bankruptcy.* The Secretary considers a National Defense Student Loan, a National Direct Student Loan, a Guaranteed Student loan, or a PLUS that is discharged in bankruptcy to be in default for purposes of this section.

(i) *GSL/PLUS—Reliance on student's statement.* An institution, in determining whether a student is in default on a loan made under the Guaranteed Student Loan Program, or the PLUS Program, may rely upon the student's written statement that he or she is not in default unless the institution has information to the contrary.

(42 U.S.C. 2753; 20 U.S.C. 1091)

[46 FR 5266, Jan. 19, 1981, and amended at 46 FR 6326, Jan. 19, 1981]

§ 675.10 Special sessions.

(a) During a special session (e.g., summer school) or during a full-time work period of a cooperative education program, a student is eligible for employment under CWS if he or she—

(1) Is otherwise eligible (see § 675.9); and

(2)(i) Was enrolled at that institution during the preceding term and will complete his or her course of study during the special session; or

(ii) Has been accepted for the subsequent term.

(b) The Secretary considers a student to be accepted for the subsequent term if the student will be studying in an eligible program of study abroad.

(c)(1) If an institution provides CWS employment to a student during a special session when the student was not enrolled during the preceding term, it must maintain a written record demonstrating—

(i) That it accepts the student for the subsequent term; and

(ii) That the student accepts its offer.

(2) The institution may not provide CWS employment to a student if it believes the student does not intend to enroll in the subsequent term.

(3) The institution must immediately terminate a student's employment if it becomes aware after employment begins that the student does not intend to enroll in the subsequent term.

(42 U.S.C. 2753)

§ 675.11 Allowable costs of attendance.

(a) *General.* (1) Except as provided in paragraphs (d) and (e) of this section, a student's cost of attendance means—

(i) The tuition and fees charged to a full-time student for an academic year by the institution he or she is attending as determined under paragraph (b) of this section;

(ii) An allowance for room and board expenses for an academic year, as determined under paragraph (c) of this section;

(iii) A reasonable allowance determined by the institution for books and supplies for an academic year;

(iv) A reasonable allowance determined by the institution for transportation for an academic year. This allowance may include—

(A) The cost of travel between the student's residence and the institution; and

(B) The cost of travel required for completion of a course of study;

(v) A reasonable allowance determined by the institution for miscellaneous personal expenses for an academic year;

(vi) A reasonable allowance determined by the institution for an academic year for expenses related to study abroad for students enrolled in an academic program which normally includes a formal program of study outside the United States;

(vii) A reasonable allowance determined by the institution for expenses for an academic year related to child care for a student's dependent children; and

(viii) A reasonable allowance determined by the institution for a handicapped student's expenses for an academic year related to his or her handicap, if these expenses are not provided for by any other assisting agency or program. This allowance may include expenses related to special services, transportation, equipment and supplies.

(2) If another agency or program provides assistance for any expenses related to a student's handicap, thereby reducing the student's costs, the institution shall document such assist-

ance as part of the student's financial aid record.

(3) For purposes of this section, a handicapped student is a student who meets the definition contained in section 602(1) of the Education of the Handicapped Act. Accordingly, a handicapped student is a student who is mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, or orthopedically impaired, or is otherwise health impaired or has specific learning disabilities which require special education and related services.

(4) The institution shall take into account when determining a student's cost of attendance—

(i) The period for which financial assistance is awarded; and

(ii) Whether the student is enrolled on a full-time or less than full-time basis.

(20 U.S.C. 1089)

(b) *Tuition and fees.* (1) An institution shall determine the tuition and fees charged a full-time student by calculating—

(i) The actual amount charged the full-time student for tuition and fees for an academic year; or

(ii) The average amount it charges full-time students for tuition and fees for an academic year. If the institution selects this option, it must determine an average cost for each of the following categories of students:

(A) Undergraduate students;

(B) Graduate student; and

(C) Professional students.

(2) If an institution establishes its tuition and fee charges on a residency requirement basis (e.g. In-State and Out-of-State) and elects to calculate an average tuition and fee charge, it shall establish a separate average charge for each different residency based classification.

(3) An institution may determine a separate average charge for any other distinct classification upon which it bases tuition and fee charges.

(4) An institution shall determine the tuition and fees charged a less than full-time student by—

(i) Calculating the actual amount it charges the student for tuition and fees for an academic year; or

(ii) Reducing the amount it calculated under paragraphs (b)(1), (2), or (3) of this section to reflect the less than full-time enrollment of that student.

(20 U.S.C. 1089)

(c) *Room and board.* (1) The institution shall calculate a student's room and board allowance as follows—

(i) For a student who has no dependents and lives with his or her parent(s), an allowance of $1,100;

(ii) For a student who has no dependents and lives in institutionally owned or operated housing—

(A) The actual amount charged the student for room and board for an academic year; or

(B) A standard allowance based on the average amount it charges most of its student residents for room and board for an academic year;

(iii) For a student who has no dependents and does not live with his or her parent(s) or in institutionally owned or operated housing, a standard allowance determined by the institution for room and board for an academic year; or

(iv) For a student who has dependents, an allowance determined by the institution for room and board for an academic year based upon expenses incurred by the student and his or her dependent(s).

(2) For purposes of this section, a spouse is considered a dependent.

(20 U.S.C. 1089)

(d) *Attendance costs for students in correspondence study programs.* The cost of attendance for a student enrolled in a correspondence study program means—

(1) Actual tuition and fees charged to the student for an academic year;

(2) A reasonable allowance determined by the institution for books and supplies for an academic year, if required for the completion of the program; and

(3) If incurred in fulfilling a required period of residential training, expenses for—

(i) Room and board; and

(ii) Travel between the student's residence and the institution.

(20 U.S.C. 1089)

(e) *Attendance costs for students whose program length exceeds the academic year at institutions using clock hours.* The cost of attendance for a student enrolled in an institution measuring progress in clock hours who is charged tuition and fees for a program whose length exceeds the length of the academic year at the institution, is determined by adding—

(1) Tuition and fees × clock hours in the academic year ÷ clock hours in the program plus

(2) Room and board and other applicable allowances determined under paragraphs (a) and (c) of this section.

(f) *Adjustments.* The institution may, in individual cases, adjust a student's cost of attendance if the cost of attendance calculated under paragraphs (a) through (e) of this section is not a reasonable approximation of the student's actual costs.

(20 U.S.C. 1089(e))

(g) *Required documentation.* An institution must be able to justify and document the cost of attendance figures established under this section.

(20 U.S.C. 1089)

[46 FR 6326, Jan. 21, 1981]

*§ 675.12 Expected family contribution.

(a) *Dependent students.* In determining the amount a dependent student and his or her spouse and parents are expected to contribute to the student's cost of attendance, the financial aid adminstrator must consider—

(1) Any serious illness in the family. (Family members include the student, the student's parents and spouse, and any other persons the parents may claim as exemptions under the Internal Revenue Code);

(2) The number of the parents' dependent children;

(3) The number of the parents' dependent children attending institutions of higher education;

(4) Tuition costs of dependent children attending elementary and secondary schools; and

(5) Any other circumstances that could affect the ability of the student, the student's spouse, and the student's parents to contribute to his or her cost of attendance.

(b) *Independent students.* In determining the amount an independent student and spouse are expected to contribute to the student's cost of attendance, the financial aid administrator must consider—

(1) Any serious illness in the family. (Family members include the student, his or her spouse, and any other persons the student or spouse may claim as exemptions under the Internal Revenue Code);

(2) The number of the student's dependent children;

(3) The number of the student's dependent children attending institutions of higher education;

(4) Tuition costs of dependent children attending elementary and secondary schools; and

(5) Any other circumstances that could affect the ability of the student or spouse to contribute to the student's cost of attendance.

(c) *Special determination of dependent student-parent relationship.* (1) The student financial aid administrator must determine whether the relationship between a student and his or her parents makes it unreasonable to expect the parents to contribute to the student's cost of attendance, regardless of their ability to do so, if requested by a student who does not—

(i) Live with his or her parents;

(ii) Visit his or her parents for periods longer than typical for other adult family members; or

(iii) Receive gifts from his or her parents more valuable than those typically given to other adult nondependent offspring.

(2) Before determining that it is unreasonable for a parent of a dependent student to contribute to the student's attendance costs, the financial aid administrator must determine whether the student's parents are, in fact, willing to contribute toward those costs.

(3) The student financial aid administrator must make that determination part of the institution's written record.

(d) *Native American students.* To determine a Native American's expected family contribution, an institution may not consider the following as income or assets of the student or his or her family:

(1) Awards made under the Distribution of Judgment Funds Act (25 U.S.C. 1401 et seq.) or the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(2) Property that may not be sold or encumbered without the consent of the Secretary of the Interior.

(3) Any other property held in trust for the student or his or her family by the U.S. Government.

(e) *Annual determinations.* An institution must determine a student's need at least annually.

(42 U.S.C. 2753)

*§ 675.13 Approved need analysis systems.

(a) An institution must use a Secretary approved need analysis system or calculation method in complying with the requirements in § 675.12 (expected family contribution).

(b) *Preapproved systems for dependent students.* The Secretary has approved the following systems for dependent students:

(1) The method of computing an expected family contribution used in the Pell Grant program (34 CFR Part 690).

(2) The income tax system if adjusted to reflect the number of the parents' dependent children who are attending institutions of higher education. The expected family contribution produced under this system is the sum of—

(i) The money the student is reasonably able to contribute;

(ii) The amount of Federal income tax paid by the student's parents;

(iii) 5% of the parents' net assets in excess of $17,000 if there are no farm or business assets; or

(iv) 5% of the parents' net assets in excess of $50,000 if there are farm and business assets. However, no more than $17,000 may be deducted for assets other than farm and business assets.

(c) *Criteria for other systems for dependent students.* (1) The Secretary approves other need analysis systems for dependent students that are properly submitted (see paragraph (e)), if the system produces expected family contribution figures that—

(i) Increase incrementally as the parents' financial strength, measured in constant dollars, increases;

(ii) Are equal for families of equal financial strength; and

(iii) Are within $50 of the expected family contribution figures in 75% of the sample cases supplied by the Secretary.

(2) The Secretary computes the sample cases by:

(i) Deducting from the sum of the parents' adjusted gross income and nontaxable income—

(A) The amount of Federal income taxes and social security taxes;

(B) An 8% allowance on total income for State and local taxes; and

(C) A family maintenance allowance (excluding the student during the academic year) using Department of Labor estimates at a low standard of living;

(ii) Adding to this remainder, 12% of the net market value of the parents' assets, after deducting a standard asset reserve; and

(iii) Applying a rate schedule that the Secretary will publish annually with the sample cases.

(3)(i) In developing sample cases, the Secretary selects cases where the main wage earner is 45 years of age.

(ii) The Secretary does not select cases that involve medical and dental expenses, casualty and theft losses, housekeeping allowances, farm or business assets, more than one family member attending a postsecondary institution as an undergraduate, social security or veteran's benefits, or any unusual circumstances.

(4) In comparing figures from systems submitted for approval with figures from sample cases, the Secretary treats an expected parental contribution of less than zero as zero.

(5) In order to insure measurement in constant dollars, the Secretary revises sample case figures for inflation annually by adjusting—

(i) Deductions for family maintenance;

(ii) The standard deduction from assets; and

(iii) The rate of contribution from income and assets.

(d) *Systems for independent students.* The Secretary approves the following systems for independent students:

(1) The method of computing an expected family contribution used in the Pell Grant program (34 CFR Part 690).

(2) The systems of need analysis for independent students published by those organizations approved for dependent students under paragraph (c).

(e) *Application procedures for system approval.* (1) An organization or individual wishing to have a system for dependent students approved must also submit a system for independent students. Both systems must be submitted to the Secretary by June 30.

(2) The Secretary lists approved systems in the FEDERAL REGISTER by the following September 1.

(3) Applications for approval must include—

(i) Information the Secretary needs to determine whether or not the system meets the requirements of paragraph (c); and

(ii) The expected family contribution amounts produced by that system for the sample cases.

(f) *Duration of approval.* (1) There is no specified expiration date for need analysis systems for dependent students approved under paragraph (b).

(2) An institution may use the need analysis systems for dependent and independent students approved under paragraphs (c) and (d) to determine student eligibility and amount of assistance under Campus Based Programs for an academic year that begins—

(i) No earlier than the following June 1; or

(ii) No later than 12 months after that June 1 date.

(g) *Adjustments.* The institution, in individual cases, may further adjust expected family contributions computed according to one of the approved systems if—

(1) The student financial aid administrator believes the expected family contribution does not accurately reflect the student's (or parent's) ability to contribute; and

(2) The institution documents all adjustments in writing with an accompanying explanation and makes them part of the institution's records.

(42 U.S.C. 2753)

*§ 675.14 Coordination of student financial aid programs, award amount, and overaward.

(a) *Coordinating official.* An institution must appoint a coordinating official for its CWS and other Federal and non-Federal student financial aid programs.

(b) *Overaward prohibited, general rule.* (1) An institution may not award CWS assistance to a student if the CWS, when combined with all other resources, exceeds the student's financial need. The institution, however, does NOT violate this rule if—

(i) The student receives additional funds after the institution awards aid, and total resources exceed his or her financial need by $200 or less by the end of the academic year; or

(ii) The student earns more money from employment than the institution anticipated when it awarded the CWS, and it treats the earnings in accordance with paragraph (c) (prevention of overaward).

(2) A student's financial need may not exceed his or her cost of education.

(3) If a student's resources exceed his or her need by more than $200, and the excess is not from employment, the overaward is the amount that exceeds the $200.

(c) *Prevention of overaward by treatment of earnings.* An institution must take the following steps when it learns that a CWS recipient has earned, or will earn, more than $200 over his or her financial need:

(1) It must decide whether the student needs the money to pay for necessary additional attendance costs, unanticipated when it awarded financial aid to the student. If the student does, no further action is necessary.

(2) If the student's earnings still exceed need by $200 or more after the institution subtracts any additional costs, it must cancel any unpaid loan or grant (other than Pell Grants) to avoid exceeding need by more than $200.

(3) If the student's earnings still exceed his or her need by more than $200 after the institution takes the steps required in the two preceding subparagraphs, and the student is enrolled for the next academic year, the institution must use the amount that exceeds $200 as—

(i) A resource to help pay the student's cost of attendance in the following year; or

(ii) A substitute for the student's expected family contribution for the current year unless a GSL or PLUS is used for that purpose.

(4) If the student's earnings still exceed his or her need by more than $200 after the institution takes the steps required in subparagraphs (1) and (2), and the student is NOT enrolled for the next academic year, no further action is necessary.

(d) *Resources.* The Secretary considers that "resources" include, but are not limited to, any—

(1) Funds the student is entitled to receive from a Pell Grant, regardless of whether the student applies for it;

(2) Waiver of tuition and fees;

(3) Scholarship or grant, including a SEOG or athletic scholarship;

(4) Fellowship or assistantship;

(5) Insurance programs for the student's education, including any social security educational benefits not included in computing EFC;

(6) GSL or PLUS as indicated under paragraph (e);

(7) Long-term loans, including NDSL but excluding GSL, and PLUS, made by the institution;

(8) Net earnings from employment, including any part of an independent student's net earnings not included as part of the student's EFC. ("Net earnings" means gross earnings minus taxes and job related costs); and

(9) Veterans benefits (except that part included as part of the student's EFC).

(e) *Treatment of Guaranteed Student Loans (GSL) and Parent Loans for Undergraduate Students (PLUS).* (1) A student may use a GSL or a PLUS as a substitute for his or her expected family contribution.

(2) However, if the loan amounts under one or both of these programs exceeds the student's expected family contribution, the Secretary considers the excess to be a resource.

(f) *Administrative responsibility.* (1) An institution is responsible ONLY for the resources it—

(i) Makes available to its students;

(ii) Knows about; or

(iii) Can reasonably anticipate at the time it awards CWS assistance to the student.

(2) An institution must take reasonable steps to stay informed about the earnings of a student employed outside the institution.

(g) The provisions of paragraph (b) of this section are retroactive to October 12, 1976.

(42 U.S.C. 2753)

§ 675.15 Coordination with BIA grants.

*(a) To determine the amount of CWS compensation for a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution must prepare a package of student aid—

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with packages prepared for students in similar circumstances who are not eligible for a BIA education grant.

*(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements that package.

(2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.

*(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted and may be deducted only from the other assistance, not the BIA education grant.

(2) The institution must deduct the excess in the following sequence: loans, work-study awards, and grants other than Pell Grants. However, the institution may change the sequence if requested by a student and the institu-

tion believes the change benefits the student.

•(d) To determine the financial need of a BIA-eligible student, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(42 U.S.C. 2753)

§ 675.16 Payments to students.

(a)(1)(i) An institution must pay a student at least once a month. The Federal share of each payment must be paid to the student by check, or similar instrument, that the student can cash on his or her own endorsement.

(ii) The institution may not directly transfer the Federal share of any payment to the student's account at the institution or elsewhere to pay expenses or bills.

(2) Regardless of who employs the student, the institution is responsible for ensuring that the student is paid for work performed during the previous payroll period.

(3) A student's CWS wages are obligated when the student performs the work.

(b)(1) If an institution pays a student its share of his of her CWS wages by check, it must pay the student at the same time it pays the Federal share.

(2) If an institution pays a student its CWS share for an award period in the form of tuition, fees, services, or equipment, it must pay that share before the student's final payroll period.

(3) If an institution pays its CWS share in the form of prepaid tuition, fees, services, or equipment for a forthcoming academic period, it must give the student a statement before the close of his or her final payroll period listing the amount of tuition, fees, services, or equipment earned.

(c) Before an institution employs a student under CWS, it must—

(1) Get a written employment acceptance statement from the student; and

(2) Give the student a statement listing—

(i) The amount of the student's CWS award;

(ii) All other student financial aid it made available to the student; and

(iii) The condition that continued CWS employment depends upon the student's maintaining satisfactory academic progress as an eligible student during the academic year.

(d)(1) An institution may not pay a student College Work-Study wages unless the student files a statement of educational purpose with the institution in which the student declares that he or she will use those wages solely for educational expenses in connection with attendance at the institution.

(2) The Secretary considers the following statement as satisfying this requirement.

STATEMENT OF EDUCATIONAL PURPOSE

I declare that I will use the wages or salary I receive under the College Work-Study program solely for expenses connected with attendance at ———————— (name of institution).

——— (Date)

———————— (Signature)

* * * * *

(20 U.S.C. 1068g; 28 U.S.C. 1746)

(e) *Correspondence study.* A correspondence student must submit his or her first completed lesson before receiving a payment.

(f) If an institution computes a student's need using estimated data submitted before January 1 of the previous award year, the institution may not pay the student unless it verifies that information.

(42 U.S.C. 2753; 20 U.S.C. 1091)

•§ 675.17 Federal interest in allocated funds.

Except for funds received for the administrative cost allowance (see § 675.18(b)), funds received by an institution under the CWS program are held in trust for the intended student beneficiaries. Funds may not be used or hypothecated (i.e., serve as collateral) for any other purpose.

(42 U.S.C. 2751-56)

§ 675.18 Use of funds.

(a) *General.* Funds allocated to an institution under the CWS program may only be used to—

(1) Pay the Federal share of CWS wages;

(2) Transfer to the institution's SEOG program (see § 675.21);

(3) Carry out the activities described in paragraph (b); and

(4) Meet the cost of a job location and development program under Subpart B.

(b) *Administrative cost allowance.* An institution participating in the CWS program is entitled to an administrative cost allowance.

(1) The amount of the allowance equals—

(i) Five (5) percent of the first $2,750,000 of the institution's expenditures in an award year under the CWS, SEOG, and NDSL programs; plus

(ii) Four (4) percent of its expenditures which are greater than $2,750,000 but less than $5,500,000; plus

(iii) Three (3) percent of its expenditures in excess of $5,500,000.

(2) However, for the purpose of calculating the allowance in paragraph (b)(1) this section, CWS expenditures made under the Community Service Learning program (§ 675.28) or NDSL loans that are assigned to the Secretary under section 463(a)(6)(B) of the Higher Education Act are not included.

(3) An institution must use its administrative cost allowance to offset its costs of administering the Pell Grant, CWS, SEOG, and NDSL programs. Administrative costs also include the expenses incurred for carrying out the student consumer information services requirements of Subpart C of the Student Assistance General Provisions, 34 CFR Part 668.

(4)(i) In addition to the amount calculated in paragraph (b)(1) of this section, an institution's administrative cost allowance includes ten (10) percent of its expenditures under the Community Service Learning program set forth in § 675.28.

(ii) This portion of its administrative cost allowance must be taken from the institution's CWS allocation.

(iii) The institution may use this portion of its administrative cost allowance to offset the costs of administering the Pell Grant, CWS, SEOG, and NDSL programs and to pay the administrative costs of conducting its Community Service Learning program. These latter costs may include the costs of—

(A) Developing mechanisms to assure the academic quality of the student experience;

(B) Assuring student access to educational resources, expertise, and supervision necessary to achieve community service objectives; and

(C) Collaborating with public and private nonprofit agencies in the planning and administering of these programs.

(c) An institution may carry forward and expend in the next award year up to ten (10) percent of its current award year CWS allocation.

(d) An institution may spend up to ten (10) percent of its current award year CWS allocation in and for expenses incurred in the previous award year. However, the Secretary must approve the amount of funds that may be spent in this manner.

(e) An institution may not charge any administrative expenses against its CWS allocation for an award year unless it provides CWS employment to its students for that year.

(20 U.S.C. 1096; 42 U.S.C. 2753, 2756, and 2756b)

§ 675.19 Fiscal procedures and records.

*(a) *Fiscal procedures.* (1) In administering its CWS program, an institution must establish and maintain an internal control system of checks and balances that insures that no office can both authorize payments and disburse funds to students.

(2) If an institution uses a fiscal agent, that agent may perform only ministerial acts.

(3) A separate bank account for CWS funds is not required. However an institution must notify any bank in which it deposits CWS funds of all accounts in that bank in which it deposits Federal funds. The institution may give this notice by either—

(i) Including in the name of the account the fact that Federal funds are deposited; or

(ii) Notifying the bank in writing of the accounts in which it deposits Federal funds. The institution must retain a copy of this notice in its files.

(b) *Records and reporting.* (1) An institution must establish and maintain on a current basis financial records that reflect all program transactions. The institution must establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution must also establish and maintain program and fiscal records that—

(i) Include a certification that each student has worked and earned the amount being paid. The student's supervisor, an official of the institution or off-campus agency, must sign the certification. The certification must include—

(A) For students paid on an hourly basis, a time record showing the hours each student worked; and

(B) For all students, a statement of whether the work was performed in a satisfactory manner.

(ii) Include a payroll voucher containing sufficient information to support all payroll disbursements;

(iii) Include a noncash contribution record to document any payment of the institution's share of the student's earnings in the form of services and equipment (see § 675.27(a));

(iv) Identify each student's account and status;

(v) Show the eligibility of each student aided under the program;

(vi) Show the amount of need and how the need was met for each student;

(vii) Identify the administrator who determined the need; and

(viii) Are reconciled at least monthly.

(3) Each year an institution must submit a Fiscal-Operations Report plus other information the Secretary requires. The institution must comply with requirements to insure the information reported is accurate and must submit it on the form and at the time specified by the Secretary.

(c) *Retention of records.* (1) *Records.* Each institution must keep intact and accessible records of the receipt and expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent.

*(2) *Period of retention.* Except for audit questions, an institution must keep records for an award year for five years after it submits its Fiscal-Operations Reports for that year.

*(3) *Microfilm copies.* An institution may substitute microfilm copies for original records in meeting the requirements of this section.

*(4) *Audit questions.* An institution must keep records in any claim or expenditure questioned by Federal audit until resolution of any audit questions. However, the institution does not have to retain records beyond 5 years if the actions taken by the United States to recover funds are barred by the Federal statute of limitation in 28 U.S.C. 2415(b).

*(d) *Audits-Federal.* An institution must give the Secretary, the Comptroller General of the United States, or their duly authorized representatives access to the records specified in paragraphs (c) (1) and (2) and to any other pertinent books, documents, papers, and records.

*(e) *Audits—Non-Federal.* (1) An institution must audit, or have audited under its direction, CWS transactions to determine at a minimum—

(i) The fiscal integrity of financial transactions and reports; and

(ii) If those transactions are in compliance with the applicable laws and regulations.

(2) The audits must be performed in accordance with the Education Department's "Audit Guide" for student financial aid programs.

(3) The institution must have an audit performed at least once every two years unless the Secretary approves a longer interval.

(4) Each audit must cover the entire period of time since the last audit.

*(f) *Audit reports.* The institution must submit audit reports to its local regional office of the Education Department's Office of Inspector Gener-

al Audit Agency. It must give the Secretary and the Inspector General access to records or other documents necessary to the audit's review.

(42 U.S.C. 2753; 20 U.S.C. 1232c)

§ 675.20 Maintenance of effort.

(a) For each award year it receives a CWS allocation, an institution must spend from its own scholarship and student financial aid program at least one-third its aid program expenditures for the 3 award years preceding the latest of the following:

(1) The effective date of any agreement required by section 443 of the College Work-Study Program (42 U.S.C. 2753) or section 407 of the Educational Opportunity Grants Program (20 U.S.C. 1067) that was in effect on June 30, 1973.

(2) The award year the institution received its first CWS allocation.

(3) The award year the institution received its first Educational Opportunity Grant Program allocation (20 U.S.C. 1061-1067, 1069).

(4) The award year the institution received its first SEOG allocation (20 U.S.C. 1070b-1070b-3) if it did not participate in the Educational Opportunity Grant Program during the 1972-1973 award year.

(b) The Secretary may waive the maintenance of effort requirements for an award year because of the following special circumstances:

(1) Fund withdrawals from outside sources (Public appropriations are not considered outside sources for public institutions).

(2) An enrollment decline if the institution continues to spend from its own scholarship and student financial aid program the average amount it spent per student during the 3-year base period.

(3) Voluntary withdrawal as a GSL lender. The Secretary waives that portion of the failure that equals one-third the amount of loans the institution made as a lender during the 3-year base period. However, to have this portion waived, the institution must arrange alternate sources of financing for its students at least equal to the amount the Secretary waives.

(4) Termination as a GSL lender by the Secretary.

(i) The Secretary waives, for the year the institution is terminated as a lender, the portion of the failure that equals one-third the amount of loans the institution made as a lender during the 3-year base period.

(ii) The Secretary also waives, for succeeding years, the portion of the failure that equals one-third of the amount of loans the institution made as a lender during the 3-year base period if the institution arranges alternate sources of assistance for its students at least equal to the amount the Secretary waives.

(5) The Secretary considers that an institution has provided alternate sources of assistance for its students if it provides the assistance under a written agreement between the funding source and the institution.

(c) An institution, to obtain a waiver, must submit to the Secretary—

(1) A request for a waiver; and

(2) A description of circumstances justifying the waiver.

(d) An institution's "own scholarship and student financial aid program" includes—

(1) Any expenditures of its own funds for scholarships, grants, loans, tuition waivers, fee waivers, and fee remissions;

(2) The institution's employment of its graduate and undergraduate students, whether or not they are eligible for the SEOG or CWS programs; and

(3) Any funds donated to the institution for student financial aid if the institution chooses the recipients and the award amounts. However, the institution may not claim funds from Federal sources as part of its "own scholarship and student financial aid program."

(e) (1) According to an institution's stated practices, scholarships and other student financial aid given to faculty members' dependents or to institution employees may be considered as either—

(i) Student financial aid; or

(ii) Employee benefits.

(2) Fellowships and assistantships count as financial aid unless it is the institution's stated practice to consider the holders faculty members.

(3) Alternatives in subparagraphs (1) and (2) apply to both the base year

period and current expenditures. Any change must have the Secretary's written approval.

(20 U.S.C. 1094)

§ 675.21 Transfer of funds.

(a) An institution may transfer up to 10% of its allocation for an award year from its CWS program to its SEOG program and vice versa. The institution must use the funds, when transferred, according to the requirements of the program to which they were transferred.

(b) An institution may use CWS funds transferred to the SEOG program for initial or continuing grants, as the institution sees fit.

(c) An institution must report any funds transferred on the Fiscal-Operations Report required under § 675.19(b).

(d) An institution shall transfer back to the SEOG program any funds unexpended at the end of the award year that it transferred to the CWS program from the SEOG program.

(20 U.S.C. 1095)

§ 675.22 Project eligibility.

(a)(1) College Work-Study employment, except for students attending a proprietary institution, may involve work—

(i) For the institution itself, i.e., the institution is the employer; or

(ii) In the public interest for a Federal, State, or local public agency or a private nonprofit organization.

(2) *Proprietary institution eligibility.* (i) CWS employment for students attending a proprietary institution may involve only work in the public interest for a Federal, State, or local public agency or for a private nonprofit organization.

(ii) A proprietary institution of higher education, for the purposes of this paragraph, also includes any nonprofit organization owned or controlled by the proprietary institution or by a corporation, association, partnership, or individual that owns or controls the proprietary institution.

(b) Work for the institution itself also includes work in those operations the institution typically performs directly for its students but sometimes contracts for if—

(1) The work contracted for is in food service, cleaning, maintenance, or security; and

(2) The contract specifies—

(i) The number of students to be employed; and

(ii) That the institution selects the students to be employed and determines each student's pay rate.

(c) *CWS employment in the public interest.* The Secretary considers work in the public interest to be work performed for the national or community welfare rather than work performed to benefit a particular interest or group. Work is NOT in the public interest if—

(1) It primarily benefits the members of a limited membership organization such as a credit union, a fraternal or religious order, or a cooperative;

(2) A student works for an elected official outside the regular administration of Federal, State, or local government; or

(3) A student's political support or party affiliation is taken into account in hiring him or her.

(d) *Non-related profitmaking activities of institutions.* (1) Employment connected with an institution's non-related profitmaking activities does not qualify as "work for the institution" or "work in the public interest." Activities conducted as part of the institution's own educational, cultural, or athletic programs are not considered "non-related."

(2) Non-related profitmaking activities include the operation or rental of athletic fields, auditoriums, theaters, and parking lots.

(3) This restriction also applies to administrative functions at the institution connected with the non-related profitmaking activities.

(e) *CWS employment limitations and conditions.* (1) CWS employment must be governed by employment conditions, including pay, that are appropriate and reasonable in terms of—

(i) Type of work;

(ii) Geographical region;

(iii) Employee proficiency; and

(iv) Any applicable Federal, State, or local law.

(2) CWS employment may not—

(i) Impair existing service contracts;

(ii) Displace employees;

(iii) Fill jobs that are vacant because the employer's regular employees are on strike;

(iv) Involve the construction, operation, or maintenance of any part of a facility used or to be used for religious worship or sectarian instruction;

(v) Involve any partisan or nonpartisan political activity associated with a faction in an election for public or party office;

(vi) Involve lobbying on the Federal level; or

(vii) Include employment for the Department of Education.

(f) *Agreement between an institution and an organization.* (1) The institution must enter into a written agreement with a Federal, State, or local public agency or with a nonprofit organization that employs its students. The agreement must set forth the CWS work conditions (see Appendix B for a sample agreement).

(2) The institution may enter into an agreement ONLY with a reliable agency or organization that has professional direction and staff.

(3) The institution is responsible for insuring that—

(i) Payment for work performed under each agreement is properly documented; and

(ii) Each student's work is properly supervised in accordance with CWS requirements.

(42 U.S.C. 2753)

§ 675.23 Eligible jobs.

(a) *General.* (1) A CWS eligible job is a job that an employer normally has paid other persons to do outside the CWS program.

(2) If no other person has held that job for that employer, it must be a job for which other employers would normally pay.

(b) *Work for academic credit.* Work that is otherwise eligible is not ineligible because it satisfies a requirement for a degree or certificate.

(42 U.S.C. 2753)

§ 675.24 Establishment of wage rates under CWS.

(a) *Wage rate.* (1) Except as provided in subparagraph (2) of this paragraph, CWS compensation must be computed on an hourly wage basis for actual time on the job. Fringe benefits may not be counted as part of the wage rate. An institution may not pay a student a salary, commission, or fee.

(2) An institution may pay a graduate student it employs a salary or on an hourly wage basis, in accordance with its usual practices.

(b) *Minimum wage rate.* The minimum wage rate for a student employee under the CWS program is the current minimum wage rate required under section 6(a) of the Fair Labor Standards Act of 1938.

(42 U.S.C. 2753)

§ 675.25 Earnings applied to cost of attendance.

(a) *Attribution.* (1) The institution determines the amount of earnings from a CWS job to be applied to a student's cost of attendance (attributed earnings) by subtracting taxes and job related costs from the student's gross earnings.

(2) If a student is employed under CWS during a vacation or other period when he or she is not attending classes, the institution applies the attributed earnings to the cost of attendance for the next period of enrollment except as specified in paragraph (c).

(b) *Job related costs.* (1) Job related costs are costs the student incurs because of his or her job. Examples are uniforms and transportation to and from work. Another example is room and board during vacation periods, except as provided in paragraph (c).

(2) If a student is on an academic year budget, job related costs, including room and board during a vacation period, are the lesser of—

(i) $300; or

(ii) 20% of net earnings.

(3) If all reasonably available jobs during the vacation period require the student to exceed the job related limits in subparagraph (2), the institution may allow a higher limit up to the lesser of—

(i) $600; or

(ii) 40% of net earnings.

(c) *12-month budget.* An institution may compute a student's budget for an academic year or for 12 months. If the institution uses a 12 month budget—

(1) The student's room and board costs for the entire 12 months are a cost of attendance rather than job related costs; and

(2) The institution must compute the student's expected family contribution on a 12-month basis.

(42 U.S.C. 2753)

§ 675.26 CWS Federal share limitations.

(a)(1) The Federal share of CWS compensation paid to a student may not exceed 80%, unless the Secretary approves a higher share (see paragraph (e)).

(2) An institution may not use CWS funds to pay a student after he or she has earned $200 over his or her financial need.

(b) The institution may NOT include the following when determining the Federal share:

(1) Fringe benefits such as paid sick days, paid vacations, or paid holidays.

(2) The employer's share of social security, workmen's compensation, retirement, or any other welfare or insurance program that the employer must pay on account of the student employee.

(c) Either the institution or the student's employer may pay a student employed off-campus. The employment agreement between the institution and the employing agency or organization may require the employer to pay—

(1) The non-Federal share of the student earnings;

(2) Required employer costs such as the employer's share of social security or workmen's compensation; and

(3) The institution's administrative costs not already paid from the institution's administrative cost allowance.

(d) If an institution receives more money under an employment agreement from an off-campus employer than required employer costs, its non-Federal share, and its CWS administrative costs, excess funds must be—

(1) Used to reduce the Federal share on a dollar-for-dollar basis;

(2) Held in trust for off-campus student employment next year; or

(3) Refunded to the off-campus employer.

(e)(1) The Secretary may approve a Federal share greater than 80% of CWS compensation if the institution—

(i) Is designated a "developing institution of higher education" under 34 CFR Part 624; or

(ii) Proves that at least 50% of its students who are at least half-time students have parents whose annual adjusted gross income is less than $7,500 a year.

(2) The Secretary pays a 100% Federal share for that part of CWS compensation that exceeds—

(i) The amount of CWS compensation paid to students during the 1975-1976 award years; or

(ii) An amount the Secretary specifies for institutions not participating in the CWS program during the 1975-1976 award year.

(3) An institution, in order to receive a Federal share of more than 80% for an award year, must indicate its intent to request the additional funds as part of its regular funding application for that year.

(42 U.S.C. 2753 and 20 U.S.C. 1055)

§ 675.27 Nature and source of institutional share.

(a)(1) An institution may use any resource available to it, except funds allocated under the CWS program, to pay the institutional share of CWS compensation to its students. The institutional share may be paid in the form of services and equipment, e.g., tuition, room, board, and books.

(2) The institution must document all amounts claimed as non-cash contributions.

(3) Non-cash compensation may not include forgiveness of a charge assessed solely because of a student's employment under the CWS program.

(b) A school may not solicit or accept fees, commissions, contributions, or gifts as a condition for CWS employment, nor permit any organization with which it has an employment agreement to do so.

(42 U.S.C. 2753)

§ 675.28 Community Service Learning Program.

(a)(1) From its allocation under the CWS program, an institution may employ its students in a Community Service Learning Program designed to develop, improve or expand services for low-income individuals and families, or to solve particular problems related to the needs of low-income individuals.

(2) All the provisions of this part governing the employment of students are applicable to the Community Service Learning Program.

(b) A Community Service Learning Program is a program of student work that—

(1) Provides tangible community services for or on behalf of low-income individuals; and

(2) Provides students with work-learning opportunities related to their educational or vocational programs or goals.

(c) As used in this section—

(1) Low-income individual means an individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of the Census.

(2) Community services means direct service, or planning or applied research activities, designed to—

(i) Improve the quality of life for community residents, particularly low-income individuals, or

(ii) Solve particular problems relating to the needs of low-income individuals.

(3) Community services may include activities related to such fields as health care, education, welfare, social services, public safety, crime prevention and control, transportation, recreation, housing and neighborhood improvement, rural development and community improvement.

(42 U.S.C. 2756b)

Subpart B—Job Location and Development Program

§ 675.31 Purpose.

The purpose of the job location and development program is to expand off-campus job opportunities for students enrolled in eligible institutions of higher education who want jobs, regardless of their financial need.

(42 U.S.C. 2756a)

§ 675.32 Federal contribution allowed.

To create a job location and development project or expand an existing one, an institution may use, from its CWS allocation for each award year, the lesser of—

(a) 10%; or

(b) $25,000.

(42 U.S.C. 2756a)

§ 675.33 Allowable costs.

(a) Costs reasonably related to carrying out a CWS job location and development project are allowable.

(b) Costs related to the purchase, construction, or alteration of physical facilities or indirect administrative costs are NOT allowable.

(42 U.S.C. 2756a)

§ 675.34 Federal share of allowable costs.

An institution may use Federal funds allowed it under § 675.32 for a job location and development project to pay up to 80% of allowable costs.

(42 U.S.C. 2756a)

§ 675.35 Institutional share.

An institution's share of allowable costs may be in cash or in the form of services. However, the institution may not use Federal funds as the institution's share of its job location and development project. The institution must keep records documenting the amount and source of its share.

(42 U.S.C. 2756a)

§ 675.36 Multi-institutional job location and development project; arrangements with nonprofit organizations.

(a) Institutions participating in CWS may enter into a cooperative arrangement to establish and operate a job location and development project for their students.

(b) An institution participating in CWS may, separately or in combination with other participating institutions, arrange for a nonprofit organization to establish and operate a job location and development project for the institution's students. The nonprofit organization, however, must have professional direction and staff.

(c) Each institution must sign a written agreement with all other institutions in the cooperative arrangement or with the nonprofit organization acting on its behalf. The agreement must—

(1) Designate the administrator of the job location and development project;

(2) Specify the terms, conditions, and performance standards of the project; and

(3) Provide for an audit, as required in paragraph (d) of this section.

(d) The administrator of a cooperative arrangement or the nonprofit organization operating a project on an institution's behalf, must provide—

(1) For an audit, as required in § 675.19(d); and

(2) One copy of the audit report to each participating institution.

(e) Each institution retains responsibility for the proper disbursement of its Federal funds administered through a cooperative arrangement or by a nonprofit organization.

(42 U.S.C. 2756a)

§ 675.37 Restrictions.

A job location and development project may not—

(a) Locate or develop jobs for any institution;

(b) Locate or develop jobs for students upon graduation;

(c) Displace employees; or

(d) Impair existing contracts for services.

(42 U.S.C. 2756a)

§ 675.38 Agreement.

(a) A CWS-participating institution, to establish or expand a job location and development project, must enter into an agreement with the Secretary.

(b) The agreement must provide—

(1) That the Federal share of the project's cost not exceed 80%;

(2) That the institution submit to the Secretary an annual report on the use of the funds and an evaluation of the project's effectiveness in benefiting the institution's students; and

(3) Satisfactory assurances that—

(i) The institution will not use project funds to develop jobs at the institution;

(ii) The institution will continue to spend in its own job location and development project (from sources other than CWS funds) in each award year at least ⅘ of its expenditures for locating jobs for its students during the 3 most recent fiscal years preceding the date of the agreement;

(iii) The institution will use project funds to locate and develop jobs for students during and between periods of attendance at the institution, NOT upon graduation;

(iv) The project will not displace employees or impair existing service contracts;

(v) Project funds can realistically be expected to generate total student wages exceeding the total amount of the Federal funds spent under this subpart; and

(vi) If the institution uses Federal funds to contract with another organization, suitable performance standards will be part of that contract.

(42 U.S.C. 2756a)

§ 675.39 Maintenance of effort.

(a) An institution must continue to spend in each award year on its own job location and development project (from sources other than CWS funds) at least ⅘ of its expenditures for locating jobs for its students during the 3 most recent fiscal years preceding the date of its agreement with the Secretary.

(b) An institution's "own job location and development project" includes any expenditures of institutional funds to create off-campus jobs for enrolled students. This includes costs for staff salaries, travel, printing and mailing, telephone calls, and project equipment furnished by the institution.

(42 U.S.C. 2756a)

§ 675.40 Procedures and records.

Procedures and records concerning the administration of a job location and development project established and operated under this subpart are governed by applicable provisions of § 675.19.

(42 U.S.C. 2756a)

§ 675.41 Termination and suspension.

(a) If the Secretary terminates or suspends an institution's CWS project, the action also applies to the institution's job location and development project.

(b) The Secretary pays an institution's financial obligations incurred and allowable before the termination but not incurred—

(1) During a suspension; or

(2) In anticipation of a suspension.

(c) However, the institution must cancel as many outstanding obligations as possible.

(42 U.S.C. 2756a)

APPENDIX A—ALLOTMENTS OF FUNDS TO STATES FOR FISCAL YEAR 1972

Alabama	$5,802,379
Alaska	222,401
Arizona	2,163,160
Arkansas	3,357,696
California	19,625,311
Colorado	2,643,202
Connecticut	2,537,476
Delaware	520,542
District of Columbia	1,110,472
Florida	6,830,771
Georgia	6,390,308
Hawaii	796,559
Idaho	899,577
Illinois	10,371,320
Indiana	5,396,896
Iowa	3,925,939
Kansas	2,844,022
Kentucky	4,770,515
Louisiana	5,759,805
Maine	1,156,396
Maryland	3,549,625
Massachusetts	5,863,354
Michigan	9,157,777
Minnesota	4,773,195
Mississippi	4,885,174
Missouri	5,420,293
Montana	933,670
Nebraska	2,015,607
Nevada	335,527
New Hampshire	767,114
New Jersey	5,111,397
New Mexico	1,548,112
New York	16,923,121
North Carolina	6,181,440
North Dakota	1,067,895
Ohio	10,424,770
Oklahoma	3,522,127
Oregon	2,401,584
Pennsylvania	12,087,462
Rhode Island	995,991
South Carolina	4,483,023
South Dakota	1,185,126
Tennessee	5,964,544
Texas	14,171,730
Utah	1,532,910
Vermont	613,709
Virginia	5,605,999
Washington	3,641,590
West Virginia	2,934,188
Wisconsin	5,012,671
Wyoming	416,528
Outlying areas [1]	4,748,000
Total	237,400,000

[1] Outlying areas include Puerto Rico, Virgin Islands, Guam, American Samoa, and Trust Territory of the Pacific Islands.

APPENDIX B—MODEL OFF-CAMPUS AGREEMENT

(The paragraphs below are suggested as models for the development of a written agreement between an institution of higher education and a Federal, State, or local public agency or private nonprofit organization which employs students participating in the college work-study program. Institutions and agencies or organizations may devise additional or substitute paragraphs which are not inconsistent with the statute or regulations.)

This agreement is entered into between ——————, hereinafter known as the "Institution," and ——————, hereinafter known as the "Organization," a (Federal, State, or local public agency), (private nonprofit organization), (strike one), for the purpose of providing work to students eligible for the College Work-Study Program (CWS).

Schedules to be attached to this agreement from time to time must be signed by an authorized official of the institution and the organization and must set forth—

(1) brief descriptions of the work to be performed by students under this agreement;

(2) the total number of students to be employed;

(3) the hourly rates of pay; and

(4) the average number of hours per week each student will be used.

These schedules will also state the total length of time the project is expected to run, the total percent, if any, of student compensation that the organization will pay to the institution, and the total percent, if any, of the cost of employers' payroll contribution to be borne by the organization. The institution will inform the organization of the maximum number of hours per week a student may work.

Students will be made available to the organization by the institution to perform specific work assignments. Students may be removed from work on a particular assignment or from the organization by the institution, either on its own initiative or at the request of the organization. The organization agrees that no student will be denied work or subjected to different treatment under this agreement on the grounds of race, color, national origin, or sex. It further agrees that it will comply with the provisions of the Civil Rights Act of 1964 (Pub. L. 88-352; 78 Stat. 252) and Title IX of the Education Amendments of 1972 (Pub. L. 92-318) and the Regulations of the Department of Education which implement those Acts.

(Where appropriate any of the following 3 paragraphs or other provisions may be included.)

(1) Transportation for students to and from their work assignments will be provided by the organization at its own expense and in a manner acceptable to the institution.

(2) Transportation for students to and from their work assignments will be provided by the institution at its own expense.

(3) Transportation for students to and from their work assignments will not be provided by either the institution or the organization.

(Whether the institution or the organization will be considered the employer of the students covered under the agreement depends upon the specific arrangement as to the type of supervision exercised by the organization. It is advisable to include some provision to indicate the intent of the parties as to who is considered the employer. As appropriate, one of the following two paragraphs may be included.)[1]

(1) The institution is considered the employer for purposes of this agreement. It has the ultimate right to control and direct the services of the student for the organization. It also has the responsibility to determine that the students meet the eligibility requirements for employment under the college work-study program, to assign students to work for the organization, and to determine that the students do perform their work in fact. The organization's right is limited to direction of the details and means by which the result is to be accomplished.

(2) The organization is considered the employer for purposes of this agreement. It has the right to control and direct the services of the student, not only as to the result to be accomplished, but also as to the means by which the result is to be accomplished. The institution is limited to determining that the students meet the eligibility requirements for employment under the college work-study program, to assigning students to work for the organization, and to determining that the students do perform their work in fact.

(Wording of the following nature may be included, as appropriate, to locate responsibility for payroll disbursements and payment of employers' payroll contributions.)

Compensation of students for work performed on a project under this agreement will be disbursed—and all payments due as an employer's contribution under State or local workmen's compensation laws, under Federal or State social security laws, or under other applicable laws, will be made—by the (organization) (institution) (strike one).

(Where appropriate any of the following paragraphs may be included.)

(1) At times agreed upon in writing, the organization will pay to the institution an amount calculated to cover the organization's share of the compensation of students employed under this agreement.

(2) In addition to the payment specified in paragraph (1) above, at times agreed upon in writing, the organization will pay, by way of reimbursement to the institution, or in advance, an amount equal to any and all payments required to be made by the institution under State or local workmen's compensation laws, or under Federal or State social security laws, or under any other applicable laws, on account of students participating in projects under this agreement.

(3) At times agreed upon in writing, the institution will pay to the organization an amount calculated to cover the Federal share of the compensation of students employed under this agreement and paid by the organization. Under this arrangement the organization will furnish to the institution for each payroll period the following records for review and retention:

(a) Time reports indicating the total hours worked each week and containing the supervisor's certification as to the accuracy of the hours reported and of satisfactory performance on the part of the students;

(b) A payroll form identifying the period of work, the name of each student, each student's hourly wage rate, the number of hours each student worked, each student's gross pay, all deductions and net earnings, and the total Federal share applicable to each payroll;[2] and

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[1] It should be noted that although the following paragraphs attempt to fix the identity of the employer, they will not necessarily be determinative if the actual facts indicate otherwise. Additional wording which specifies the employer's responsibility in case of injury on the job may also be advisable, since Federal funds are not available to pay for hospital expenses or claims in case of injury on the job. In this connection it may be of interest that one or more insurance firms in at least one State have in the past been willing to write a workmen's compensation insurance policy which covers a student's injury on the job regardless of whether it is the institution or the organization which is ultimately determined to have been the student's employer when he or she was injured.

(c) Documentary evidence that students received payment for their work, such as photographic copies of cancelled checks.

PART 676—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

NOTE: An asterisk (*) indicates provisions that are common to Parts 674, 675, and 676. The use of asterisks will assure participating institutions that a provision of one regulation is identical to the corresponding provisions in the other two.

Sec.

676.1 Purpose, and identification of common provisions.
676.2 Definitions.
676.3 Apportionment and reapportionment.
676.4 Allocation, reallocation, and payment to institutions.
676.5 Application.
676.6 Funding procedures.
676.7 Application review—approval of request.
676.8 Institutional agreement.
676.9 Student eligibility.
676.10 Special sessions.
*676.11 Allowable cost of attendance.
*676.12 Expected family contribution.
*676.13 Approved need analysis systems.
*676.14 Coordination of student financial aid programs, award amount, and overaward.
676.15 Coordination with BIA grants.
676.16 Payment of grant.
*676.17 Federal interest in allocated funds.
676.18 Use of funds.
676.19 Fiscal procedures and records.
676.20 Maintenance of effort.
676.21 Transfer of funds.
676.22 Duration of student eligibility.
676.23 Types of grant awards.
676.24 Amount of grant.
APPENDIX A—ALLOTMENT OF FUNDS TO STATES FOR FISCAL YEAR 1972

AUTHORITY: Sec. 413A-413D of Title IV-A-2 of HEA, Pub. L. 89-329, 20 U.S.C. 1070b-1070b-3, unless otherwise noted.

SOURCE: 46 FR 5281, Jan. 19, 1981, unless otherwise noted.

§ 676.1 Purpose, and identification of common provisions.

(a) The Supplemental Educational Opportunity Grant Program (SEOG) awards grants to students with financial need attending institutions of higher education to help meet their costs of postsecondary education.

*(b) Provisions in these regulations that are common to all campus-based regulations are identified with an asterisk.

§ 676.2 Definitions.

The following definitions are set forth in Subpart A of the Student Assistance General Provisions, 34 CFR Part 668, Subpart A:

Ability to Benefit;

Institution of higher education (including Public or Private nonprofit institution of higher education, proprietary institution of higher education, and postsecondary vocational institution);

One-year training program;

Recognized equivalent of a high school diploma; and

Six-month training program.

Other definitions used in this part are:

**Academic year:* A period of time in which a full-time student is expected to complete—

(a) The equivalent of at least 2 semesters, 2 trimesters, or 3 quarters at an institution using credit hours; or

(b) At least 900 clock hours of training for each program at an institution using clock hours.

Act: Title IV-A-2 of the Higher Education Act of 1965 (HEA).

**Award year:* The period of time between July 1 of one year and June 30 of the following year.

**Campus Based Programs:* (a) The National Direct Student Loan Program (NDSL-34 CFR Part 674);

(b) The College Work-Study Program (CWS-34 CFR Part 675); and

(c) The Supplemental Educational Opportunity Grant Program (SEOG-34 CFR Part 676).

**Clock Hour:* The equivalent of —

(a) A 50 to 60 minute class, lecture, or recitation; or

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[2] These forms, when accepted, must be countersigned by the institution as to hours worked and satisfactory performance, as well as to the accuracy of the total Federal share which is to be reimbursed to the off-campus organization.

(b) A 50 to 60 minute faculty supervised laboratory, shop training, or internship.

College Work-Study Program (CWS): The part-time employment program for students authorized by Title IV-C of the HEA.

(42 U.S.C. 2751-2756b)

Continuing grant: A Supplemental Grant that follows and continues an initial grant (see initial grant).

**Dependent student:* A student who does not qualify as an independent student (see independent student).

Eligible Program: An undergraduate program of education or training that—

*(a) Admits as regular students only persons who—

(1) Have a high school diploma;

(2) Have a General Education Certificate (GED) or a state certificate received after passing a State authorized examination which the State recognizes as the equivalent of a high school diploma; or

(3) Are beyond the age of compulsory school attendance in the State in which the institution is located, and have the ability to benefit from the education or training offered.

(b)(1) Leads to a bachelor, associate, or undergraduate professional degree;

(2) Is at least a 2 year program that is acceptable for full credit toward a bachelor degree;

(3) Is at least a 1 year program leading to a certificate or degree that prepares a student for gainful employment in a recognized occupation; or

(4) Is, for a proprietary institution or a postsecondary vocational institution, at least a six-month program leading to a certificate or degree which prepares students for gainful employment in a recognized occupation.

**Expected family contribution:* The amount a student and his or her spouse and family are expected to pay toward his or her cost of attendance.

**Financial need:* The difference between a student's cost of attendance and his or her expected family contribution.

**Guaranteed Student Loan Program (GSL):* The student loan program authorized by Title IV-B of the HEA.

(20 U.S.C. 1071 et seq.)

**Half-time student:* An enrolled student who is carrying a half-time academic work load as determined by the institution according to its own standards and practices. However, the institution's half-time standards must equal or exceed the equivalent of the following minimum requirements:

(a) 6 semester hours or 6 quarter hours per academic term in an institution using standard semester, trimester, or quarter systems.

(b) 12 semester hours or 18 quarter hours per academic year for an institution using standard credit hours to measure progress, but not using a standard semester, trimester, or quarter system, or the prorated equivalent for a program of less than 1 year.

(c) 12 clock hours per week for an institution using clock hours.

(d) 12 hours of preparation per week for a student enrolled in a program of study by correspondence.

Independent student (effective through June 30, 1981):

(a) A student who for 1979 and 1980—

(1) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes by his or her parent(s);

(2) Has not received and will not recieve financial assistance of more than $750 in each year from his or her parent(s); and

(3) Has not lived and will not live for more than six weeks in each year in the home of his or her parent(s).

(b) If a student's mother and father are divorced or separated, only one parent will be considered to be the parent of the student for purposes of applying the criteria in paragraph (a) of this section. To determine that parent—

(1) Choose the parent with whom the student resided for the greater portion of the 12 month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(2) If the preceding criterion does not apply, choose the parent who provided the greater portion of the student's support for the 12 month period preceding the date of application to have an expected family contribution

determined under an approved need analysis system.

(3) If neither of the preceding criteria apply, choose the parent who provided the greater support for the period commencing January 1 of the calendar year which immediately precedes the first calendar year of the award period and ending 12 months prior to the date of application to have an expected family contribution determined under an approved need analysis system.

(c) If either of the parents have died, the institution shall consider only the surviving parent as the parent of the student for purposes of applying the criteria in paragraph (a) of this definition. If both parents have died, the institution shall not consider either parent.

**Independent student* (*effective July 1, 1981 through June 30, 1982*):

(a) A student who for 1980 and 1981—

(1) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes by his or her parent(s);

(2) Has not received and will not receive financial assistance of more than $1,000 in each year from his or her parent(s); and

(3) Has not lived and will not live for more than six weeks in each year in the home of his or her parent(s).

(b) If a student's mother and father are divorced or separated, only one parent will be considered to be the parent of the student for purposes of applying the the criteria in paragraph (a) of this section. To determine that parent—

(1) Choose the parent with whom the student resided for the greater portion of the 12-month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(2) If the preceding criterion does not apply, choose the parent who provided the greater portion of the student's support for the 12-month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(3) If neither of the preceding criteria apply, choose the parent who provided the greater support for the period commencing January 1 of the calendar year which immediately precedes the first calendar year of the award period and ending 12 months prior to the date of application to have an expected family contribution determine under an approved need analysis system.

(c) If either of the parents have died, the institution shall consider only the surviving parent as the parent of the student. If both parents have died, the institution shall not consider either parent.

**Independent student* (*effective July 1, 1982*):

(a) A single student who for 1981 and 1982—

(1) Has not lived and will not live for more than six weeks in either year in the home of his or her parent(s);

(2) Has not been claimed and will not be claimed as a dependent for Federal income tax purposes by his or her parent(s); and

(3) Has not received and will not receive financial assistance of more than $750 in either year from his or her parent(s); or

(b) A married student who for 1982—

(1) Has not lived and will not live for more than six weeks in the home of his or her parent(s);

(2) Has not been claimed and will not be claimed as a dependent for Federal income tax purposes by his or her parent(s); and

(3) Has not received and will not receive financial assistance of more than $750 from his or her parent(s).

(c) If a student's mother and father are divorced or separated, only one parent will be considered to be the parent of the student for purposes of applying the criteria in paragraphs (a) and (b) of this section. To determine that parent—

(1) Choose the parent with whom the student resided for the greater portion of the 12 month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(2) If the preceding criterion does not apply, choose the parent who pro-

vided the greater portion of the student's support for the 12 month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(3) If neither of the preceding criteria apply, choose the parent who provided the greater support for the period commencing January 1 of the calendar year which immediately precedes the first calendar year of the award period and ending 12 months prior to the date of application to have an expected family contribution determined under an approved need analysis system.

(d) If either of the parents have died, the institution shall consider only the surviving parent as the parent for purposes of applying the criteria in paragraphs (a) and (b) of this section. If both parents have died, the institution shall not consider either parent.

Initial grant: The first SEOG awarded and paid to a student by any institution for either—

(a) An academic year; or

(b) A portion of an academic year if the student was not enrolled for the entire year.

•*Legal guardian:* An individual appointed by a court to be a legal guardian of a person and who is specifically required by the court to use his or her own financial resources to support that person.

National Direct Student Loan Program (NDSL): The student loan program authorized by Title IV-E of the HEA.

(20 U.S.C. 1087aa-1087ii)

•*National of the United States:* A citizen of the United States or a noncitizen who owes permanent allegiance to the United States.

(8 U.S.C. 1101(a)(22))

•*Nonprofit institution:* An institution owned and operated by one or more nonprofit corporations or associations where no part of the net earnings of the institution benefits any private shareholder or individual.

(20 U.S.C. 1141(c))

•*Parent:* Parent means the student's mother, father, or legal guardian. An adoptive parent is considered to be the student's mother or father.

•*Parent Loans for Undergraduate Students Program (PLUS):* The parent loan program authorized by Title IV-B of the HEA.

•*Payment period:* A semester, trimester, or quarter. For an institution not using those academic periods, it is the period between the beginning and the midpoint or between the midpoint and the end of an academic year.

•*Pell Grant Program:* The grant program, formerly known as the Basic Educational Opportunity Grant Program, authorized by Title IV-A-1 of the HEA.

•*Regular student:* A person who is enrolled or accepted for enrollment in an eligible program in an institution of higher education for the purpose of obtaining a degree or certificate.

•*Secretary:* The Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

•*State:* The States of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(20 U.S.C. 1141(b); 20 U.S.C. 1088(a))

•*State Student Incentive Grant Program (SSIG):* The program authorized by Title IV-A-3 of the HEA.

(20 U.S.C. 1070c et seq.)

Undergraduate student: A student enrolled in an undergraduate course of study at an institution of higher education who—

(a) Has not been awarded a bachelor or first professional degree; and

(b) Is in an undergraduate course of study that usually does not exceed 4 academic years, or is enrolled in a 5 academic year program designed to lead to a first degree. A student enrolled in any other length program is considered an undergraduate student for only the first 4 academic years.

(20 U.S.C. 1070b-1070b-3 unless otherwise noted)

[46 FR 5281, Jan. 19, 1981, as amended at 47 FR 743, Jan. 6, 1982]

§ 676.3 Apportionment and reapportionment.

(a) *Apportionment—Initial grants.* The Secretary apportions—

(1) 90% of appropriated funds for initial grants according to 413D(a) of the Act. If necessary, the Secretary apportions additional amounts to each State to make that State's apportionment equal to its allotment for fiscal year 1972. The 1972 allotments are shown in Appendix A; and

(2) The remaining funds so that each institution in each State receives the amount for initial grants computed under § 676.6 or § 676.7.

(b) *Apportionment—Continuing grants.* The Secretary apportions funds appropriated for continuing grants so that each institution receives the amount computed under § 676.6 or § 676.7.

(c) *Reapportionment—Initial grants.* (1) The Secretary reapportions the amount of a State's apportionment that exceeds the approved requests for initial grants of institutions in the State.

(2) The Secretary reapportions those funds among the remaining States according to institutional need for initial year funds as computed under § 676.6 or § 676.7.

(20 U.S.C. 1070b-3)

§ 676.4 Allocation, reallocation, and payment to institutions.

(a) *Definition.* As used in this section and in § 676.6, "current year" means the 12-month period ending on the June 30 immediately following the closing date for filing a SEOG application.

(b) *Allocation.* The Secretary distributes SEOG funds according to § 676.6 or § 676.7

(c) *Reallocation.* (1)(i) If an institution anticipates not using all its allocation for initial and continuing grants by the end of an award period, it must specify the anticipated unused amount to the Secretary, who reduces the institution's allocation accordingly.

(ii) Other institutions may apply for those funds on the form and at the time specified by the Secretary.

(iii) The Secretary distributes those funds to applicant institutions in accordance with paragraph (c)(2) of this section.

(2)(i) If the funds that become available under paragraph (c)(1) of this section come from the State's initial allotment under § 676.3(a)(1), the Secretary reallocates those funds equitably to other institutions in that State. The Secretary reapportions those funds that are not needed to maintain the State's initial allotment, and any funds that do not come from that initial allotment, in accordance with paragraphs (c)(2) (ii), (iii), and (iv) of this section.

(ii) The Secretary increases awards to institutions whose students have suffered financial hardships as a result of natural disasters within the preceding 12 months.

(iii) If any funds remain, the Secretary then increases awards to institutions whose awards are less than their national fair shares determined under § 676.6. The Secretary calculates each applicant's increase as follows:

Institution's remaining shortfall/remaining shortfall of all applicants for reallocation × remaining amount available for reallocation

(An institution's remaining shortfall is the difference between its national fair share (see § 676.6 (f)(4) and (g)(4) and its award calculated in § 676.6 and this section through paragraph (c)(2)(ii))).

(iv) If any funds still remain, the Secretary reallocates the funds in a manner that best carries out the purposes of this part.

(d) *Payment to institutions.* The Secretary allocates funds for initial and continuing year grants for a specific period of time. The Secretary pays funds to an institution in advance or by reimbursement. The Secretary bases the amount to be paid on periodic fiscal reports.

(20 U.S.C. 1070b-3)

§ 676.5 Application.

(a) To participate in the SEOG program, an institution must file an application with the Secretary before an annually established closing date.

(b) The application must be on a form approved by the Secretary and contain information needed to determine the institution's allocation under §§ 676.6 and 676.7.

(c) The application must contain the information needed to determine whether the institution is complying with maintenance of effort requirements under § 676.20.

(20 U.S.C. 1070b-3)

§ 676.6 Funding procedure.

(a) *General.* (1) Each institution applying for SEOG initial year (IY) or continuing year (CY) funds receives an amount computed in the following stages:

(i) A "conditional guarantee";

(ii) An IY State increase based on its "fair share" of the State's IY apportionment;

(iii) An IY national increase based on its "fair share" of the national IY portion of the SEOG appropriation; and

(iv) A CY national increase based on its "fair share" of the national CY portion of the SEOG appropriation.

(2) Definition—As used in this section—

(i) "Base year" means the 12-month period ending on the June 30 preceding the closing date for filing an SEOG application;

(ii) "Current year" is defined in § 676.4.

(b) *Conditional guarantee.* The Secretary provides each institution a conditional guarantee computed in the following way:

(1) An institution that participated in the SEOG program in the base year receives an SEOG conditional guarantee equal to the sum of its award year 1979-80 IY and CY expenditures.

(2) An institution applying to participate in the SEOG program for the first time receives a conditional guarantee equal to the greater of—

(i) $5,000; or

(ii) (A) 90 percent of the average IY base year expenditure per student in eligible institutions offering comparable programs of instructions, multiplied by the applicant institution's base year enrollment; and

(B) The average CY base year expenditure per student in eligible institutions offering comparable programs of instruction, multiplied by the applicant institution's base year enrollment.

(3) An institution applying to participate in the SEOG program for the second time receives a conditional guarantee equal to the greatest of—

(i) $5,000;

(ii) (A) 90 percent of the average IY base year expenditure per student in eligible institutions offering comparable programs of instruction, multiplied by the applicant institution's base year enrollment; and

(B) The average CY base year expenditure per student in eligible institutions offering comparable programs of instructions, multiplied by the applicant institution's base year enrollment; or

(iii) 90 percent of its current year IY allocation and 100 percent of its current year CY allocation.

(4) The Secretary divides each institution's conditional guarantee between IY and CY funds based on the percentage that the institution's request for each type of grant bears to its total request.

(c) *SEOG need of an institution.* (1) The Secretary allocates additional funds to an institution under paragraph (e) (IY State increase), paragraph (f) (IY national increase), and paragraph (g) (CY national increase) based in part on the institution's need for SEOG funds.

(2) The Secretary computes an institution's need for IY and CY SEOG funds by the following formula: SEOG need=75% of cost of attendance—(Total expected family contribution + Pell Grants—State Student Incentive Grants—25% of institutional grants for undergraduate students).

(3) As used in paragraph (d) of this section:

(i) *Average cost of attendance* means the attendance costs for undergraduate students. These costs include tuition, fees, standard living expenses, books, and supplies. (The institution reports its total tuition and fee revenues, and the Secretary uses this amount to determine the average cost of attendance.)

(ii) *Eligible students* means for award year 1981-82 students who—

(A) Were enrolled as regular students in good standing on at least a half-time basis in an eligible program during the base year;

(B) Met program regulation requirements for citizenship or residency in the United States for the base year; and

(C) Applied for financial assistance for the base year, and for whom the institution has on file taxable and non-taxable income data and all the other information necessary to perform a needs analysis using a methodology approved by the Secretary.

(iii) State Student Incentive Grants (SSIG) means:

$$\frac{\text{State's total SSIG for the 1977-78 award year (Federal plus match)}}{\text{Total undergraduate State grants for the 1977-78 award year (including the Federal SSIG allotment)}} \times \text{institution's total undergraduate State grants for the 1977-78 award year.}$$

(For purposes of this formula, "State" means the State in which the institution is located.)

(iv) *Institutional grants* means the sum of undergraduate gift aid included in determining the maintenance of effort amount under § 676.20 during the award year 1977-78. Institutional grants shall not include student financial assistance that an institution is required by State law to provide from its own funds and is not free under any law in effect on January 1, 1979 to select the recipients or adjust the criteria by which the recipients are selected. Institutional grants shall also not include any student financial assistance that an institution contributed on behalf of the State for the SSIG Program.

(d) *SEOG need of eligible undergraduate students.* To determine the need for SEOG funds of an institution's eligible undergraduate students, the Secretary—

(1) Establishes various income categories for dependent and independent undergraduate students;

(2) Establishes an EFC for each income category of dependent and independent undergraduate students, using a need analysis method approved under § 676.13;

(3) Determines 75 percent of the average cost of attendance;

(4) Subtracts from 75 percent of the average cost of attendance the computed EFC for each income category; (Seventy-five percent of the average cost of attendance minus EFC may not be less than zero.)

(5) Multiplies the remainder by the number of eligible students in that income category;

(6) Adds the amounts obtained in all categories;

(7) Subtracts from that sum Pell Grants received by students at that institution in the base year, State Student Incentive Grants, and 25 percent of institutional grants; and

(8) Divides the institution's total SEOG need between IY and CY based on the percentage that the institution's request for each type of grant bears to its total request.

The following charts show the income categories and calculations.

DETERMINATION OF SEOG NEED FOR ELIGIBLE DEPENDENT UNDERGRADUATE STUDENTS

1—Income	2—EFC	3—70 percent times cost	4—Need column 3 less column 2	5—Number of eligible students	6—Column 4 times column 5
0 to $2,999					
$3,000 to $5,999					
$6,000 to $8,999					
$9,000 to $11,999					
$12,000 to $14,999					
$15,000 to $17,999					
$18,000 to $20,999					
$21,000 to $23,999					
$24,000 to $26,999					
$27,000 to $29,999					
$30,000 to $32,999					
$33,000 to $35,999					
$36,000 to $38,999					
$39,000 to $41,999					

DETERMINATION OF SEOG NEED FOR ELIGIBLE DEPENDENT UNDERGRADUATE STUDENTS—Continued

1—Income	2—EFC	3—70 percent times cost	4—Need column 3 less column 2	5—Number of eligible students	6—Column 4 times column 5
$42,000 to $44,999					
$45,000 and over					
7 Total for dependent undergraduate students					$

DETERMINATION OF SEOG NEED FOR ELIGIBLE INDEPENDENT UNDERGRADUATE STUDENTS

1—Income	2—EFC	3—70 percent times cost	4—Need column 3 less column 2	5—Number of eligible students	6—Column 4 times column 5
0 to $999					
$1,000 to $1,999					
$2,000 to $2,999					
$3,000 to $3,999					
$4,000 to $4,999					
$5,000 to $5,999					
$6,000 to $6,999					
$7,000 to $7,999					
$8,000 to $8,999					
$9,000 to $9,999					
$10,000 to $10,999					
$11,000 to $11,999					
$12,000 to $12,999					
$13,000 to $13,999					
$14,000 to $14,999					
$15,000 and over					
7 Total for independent undergraduate students					$

	SUMMARY AND CALCULATION OF SEOG NEED	
1	Total for dependent undergraduate students	$
2	Total for independent undergraduate students	$
3	Total all undergraduate students (1 plus 2)	$
4	All BEOG	$
5	All State grant aid	$
6	50 percent of all instutional grant aid	$
7	Total of items 4, 5, and 6	$
8	Item 3 (total all undergraduate students) less item 7 equals total SEOG need	$

(e) *IY State increase.*

(1) For any year the Secretary increases IY awards to institutions in a State ("IY State increase") if the combined IY conditional guarantees of all institutions in that State are less than the State's IY apportionment under § 676.3(a).

(2) The Secretary calculates an institution's IY State increase according to the following formula—

Institution's IY State increase = its IY State shortfall/IY State shortfalls of all institutions in the State × SEOG IY funds available for shortfall

(3) As used in the formula in paragraph (e) of this section—

(i) "SEOG IY funds available for State shortfall" is calculated by subtracting from the State IY apportionment, the IY conditional guarantees of all institutions in the State.

(ii) An institution's "IY State shortfall" is calculated by subtracting from an institution's IY State fair share its IY conditional guarantee.

(iii) An institution's "IY State fair share" is calculated as follows—

Institution's IY State fair share = its SEOG IY need/SEOG IY need of all institutions

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in the State applying for SEOG funds × State apportionment for SEOG IY

(f) *IY national increase.* (1) For any year the Secretary will further increase IY awards to institutions ("IY national increase") if the sum of the IY conditional guarantees and IY State increases awarded to institutions is less than the SEOG IY appropriation for that year.

(2) The Secretary calculates an institution's IY national increase according to the following formula—

Institution's IY national increase=its IY national shortfall IY national shortfall of all institutions×SEOG IY funds available for national shortfall

(3) As used in the formula in paragraph (f)(2) of this section—

(i) "SEOG IY funds available for national shortfall" is calculated by subtracting from the SEOG appropriation the IY conditional guarantees and State increases of all institutions.

(ii) An institution's "IY national shortfall" is calculated by subtracting from its "IY national fair share", its IY conditional guarantee and State increase.

(4) An institution's "IY national fair share" is calculated as follows:

Institution's IY national fair share=its SEOG IY need/SEOG IY need of all institutions applying for SEOG funds×SEOG IY appropriation

(g) *CY national increase.* (1) For any year the Secretary will further increase awards to institutions ("CY national increase") if the sum of the CY conditional guarantees awarded to institutions is less than the SEOG CY appropriation for that year.

(2) The Secretary calculates an institution's CY national increase according to the following formula—

Institution's CY national increase=its CY national shortfall CY national shortfall of all institutions×SEOG CY funds available for national shortfall

(3) As used in the formula in paragraph (g)(2) of this section—

(i) "SEOG CY funds available for national shortfall" is calculated by subtracting from the SEOG CY appropriation the CY conditional guarantees of all institutions.

(ii) An institution's "CY national shortfall" is calculated by subtracting from its "CY national fair share", its CY conditional guarantee.

(4) An institution's "CY national fair share" is calculated as follows:

Institution's CY national fair share=its SEOG CY need/SEOG CY need of all institutions applying for SEOG funds×SEOG CY appropriation

(h) No institution may receive more IY or CY SEOG funds than it requests.

(20 U.S.C. 1070b-3)

The following charts show the income categories and calculations for eligible undergraduate students:

1—Income	2—Expected family contribution	3—75 per cent times cost	4 (Need)—column 3 less column 2	5—Number of eligible students	6—column 4 times column 5
DETERMINATION OF SEOG NEED FOR ELIGIBLE DEPENDENT UNDERGRADUATE STUDENTS					
0 to $2,999					
$3,000 to $5,999					
$6,000 to $8,999					
$9,000 to $11,999					
$12,000 to $14,999					
$15,000 to $17,999					
$18,000 to $20,999					
$21,000 to $23,999					
$24,000 to $26,999					
$27,000 to $29,999					
$30,000 to $32,999					
$33,000 to $35,999					
$36,000 to $38,999					
$39,000 to $41,999					
$42,000 to $44,999					
$45,000 and over					
7 Total for dependent undergraduate students					$

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DETERMINATION OF SEOG NEED FOR ELIGIBLE INDEPENDENT UNDERGRADUATE STUDENTS

0 to $999					
$1,000 to $1,999					
$2,000 to $2,999					
$3,000 to $3,999					
$4,000 to $4,999					
$5,000 to $5,999					
$6,000 to $6,999					
$7,000 to $7,999					
$8,000 to $8,999					
$9,000 to $9,999					
$10,000 to $10,999					
$11,000 to $11,999					
$12,000 to $12,999					
$13,000 to $13,999					
$14,000 to $14,999					
$15,000 and over					
7 Total for independent undergraduate students					$

SUMMARY AND CALCULATION OF SEOG NEED

1	Total for dependent undergraduate students	$
2	Total for independent undergraduate students	$
3	Total for all undergraduate students (1+2)	$
4	All Pell grants	$
5	State student incentive grants	$
6	25 pct of institutional grants	$
7	Total of items 4, 5, and 6	$
8	Item 3 (total all undergraduate students) less item 7 equals total SEOG need	$

§ 676.7 Application review—approval of request.

(a) An institution may request a review of the amount it is scheduled to receive under § 676.6.

(b) A National Review Panel appointed by the Secretary reviews each institution's request. The panel consists of student financial aid administrators and Education Department personnel.

(c) In setting an award amount, the Secretary considers the panel's recommendations and its reasons for the recommendations.

(d) The Secretary sets an award amount based on procedures in § 676.6 and the review panel's recommendations.

(20 U.S.C. 1070b-3)

§ 676.8 Institutional agreement.

To participate in the SEOG program, an institution of higher education must enter into an agreement with the Secretary. The agreement provides that the institution will—

(a) Use the funds it receives solely for the purposes specified in this part; and

(b) Administer the SEOG program in accordance with the Act, the provisions of this part, and the Student Assistance General Provisions, 34 CFR Part 668.

(20 U.S.C. 1070b et seq. and 1094)

§ 676.9 Student eligibility.

(a) *Eligibility.* A student is eligible to receive an SEOG at an institution of higher education if the student—

*(1) Is a regular student;

(2) Is enrolled or accepted for enrollment in an eligible program as an undergraduate student at that institution;

*(3)(i) Is a U.S. citizen or National;

(ii) Is a permanent resident of the U.S.;

(iii) Provides evidence from the Immigration and Naturalization Service

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that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands;

*(4) Has financial need;

*(5) Is maintaining satisfactory progress in the course of study he or she is pursuing according to the standards and practices of that institution;

*(6) Does not owe a refund on a Pell Grant, Supplemental Grant or State Student Incentive Grant received to meet the cost of attending that institution; and

*(7) Is not in default on any National Defense/Direct Student Loan, Guaranteed Student Loan, or Parent Loans for Undergraduate Students (PLUS) received to meet the cost of attending that institution.

*(b) *Member of a religious order—financial need.* The Secretary considers that a member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education has no financial need if that religious order—

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3)(i) Directs the member to pursue the course of study; or

(ii) Provides subsistence support to its members.

(c) *Selection.* (1) An institution may use not more than 10 percent of its allocation to award SEOGs to eligible students who are enrolled as less than half-time students.

(2) An institution must make SEOG funds reasonably available (to the extent of available funds) to all eligible students who demonstrate financial need.

(3) The institution's selection procedures must be—

(i) Uniformly applied;

(ii) In writing; and

(iii) Maintained in the files of the student financial assistance office.

(4) The institution must maintain on file all SEOG applications for the period specified in § 676.19(c)(2).

*(d) *Determination of satisfactory progress.*

(1) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses itself BEFORE the end of the payment period, the institution may pay an SEOG to the student for the entire payment period.

(2) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses itself AFTER the end of the payment period, the institution may NOT pay the student an SEOG for that payment period OR make adjustments in subsequent financial aid payments to compensate for the loss of aid for that period.

*(e) *Overpayment of grants.* Conditions under which an institution may pay an SEOG to a student who is overpaid a grant:

(1) *Overpayment of a Pell Grant.* If an institution makes an overpayment of a Pell Grant to a student, it may continue to make SEOG payments to that student if—

(i) The student is otherwise eligible; and

(ii) It can eliminate the overpayment in the award period in which it occurred by adjusting the subsequent Pell Grant payments for that award year.

(2) *Overpayment of a Pell Grant due to institutional error.* If the institution makes an overpayment of a Pell Grant as a result of its own error and can not correct it as specified in subparagraph (1) of this paragraph, it may continue to make payments to a student if the student—

(i) Is otherwise eligible; and

(ii) Acknowledges in writing the amount of overpayment and agrees to repay it in a reasonable period of time.

(3) *Overpayment of an SEOG.* An institution may continue to make SEOG payments to a student who receives an overpayment on an SEOG if—

(i) The student is otherwise eligible; and

(ii) It can eliminate the overpayment by adjusting financial aid payments (other than Pell Grants) in the same award period in which the overpayment occurred.

(4) *Definition.* Overpayment of a grant means that a student's grant payments are greater than the amount he or she is entitled to receive.

*(f) *Default on loans.* Conditions under which an institution may pay an SEOG to a student who is in default on loans made for attendance at that institution:

(1) *Guaranteed loan and Parent Loans for Undergraduate Students.* An institution may pay an SEOG to a student who is in default on a Guaranteed Student Loan or a PLUS if the Secretary (for a Federally insured loan) or a guarantee agency (for a loan insured by that guarantee agency) determines that the student has made satisfactory arrangements to repay the defaulted loan.

(2) *National Defense/Direct Student Loan.* An institution may pay an SEOG to a student who is in default on a National Defense/Direct Student Loan made at that institution if the student has made arrangements, satisfactory to the institution, to repay the loan.

*(g) *Bankruptcy.* The Secretary does not consider a loan made under the National Defense Student Loan, National Direct Student Loan, Guaranteed Student Loan, or Parent Loans for Undergraduate Student Program that is discharged in bankruptcy to be in default for purposes of this section.

*(h) *GSL/PLUS—Reliance on student's statement.* An institution, in determining whether a student is in default on a loan made under the Guaranteed Student Loan Program or the PLUS program, may rely upon the student's written statement that he or she is not in default unless the institution has information to the contrary.

(20 U.S.C. 1070b-2 and 1091f)

[46 FR 5281, Jan. 19, 1981, as amended at 46 FR 6327, Jan. 19, 1981]

§ 675.10 Special sessions.

(a) A student enrolled at an institution in a special session (e.g., summer school) is eligible for an SEOG if he or she—

(1) Is otherwise eligible (see § 676.9);

(2)(i) Is registered at that institution for that session; or

(ii) Is taking all of the courses required to complete his or her certificate or degree; and

(3)(i) Was attending that institution during the preceding term; or

(ii) Has been accepted for the subsequent term.

(20 U.S.C. 1070b-1)

§ 676.11 Allowable cost of attendance.

(a) *General.* (1) Except as provided in paragraphs (d) and (e) of this section, a student's cost of attendance means—

(i) The tuition and fees charged to a full-time student for an academic year by the institution he or she is attending as determined under paragraph (b) of this section;

(ii) An allowance for room and board expenses for an academic year, as determined under paragraph (c) of this section;

(iii) A reasonable allowance determined by the institution for books and supplies for an academic year;

(iv) A reasonable allowance determined by the institution for transportation for an academic year. This allowance may include—

(A) The cost of travel between the student's residence and the institution; and

(B) The cost of travel required for completion of a course of study;

(v) A reasonable allowance determined by the institution for miscellaneous personal expenses for an academic year;

(vi) A reasonable allowance determined by the institution for an academic year for expenses related to study abroad for students enrolled in an academic program which normally includes a formal program of study outside the United States;

(vii) A reasonable allowance determined by the institution for expenses for an academic year related to child care for a student's dependent children; and

(viii) A reasonable allowance determined by the institution for a handicapped student's expenses for an academic year related to his or her handicap, if these expenses are not provided for by any other assisting agency or program. This allowance may include expenses related to special services, transportation, equipment and supplies.

(2) If another agency or program provides assistance for any expenses related to a student's handicap, thereby reducing the student's costs, the institution shall document such assistance as part of the student's financial aid record.

(3) For purposes of this section, a handicapped student is a student who meets the definition contained in section 602(1) of the Education of the Handicapped Act. Accordingly, a handicapped student is a student who is mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, or orthopedically impaired, or is otherwise health impaired or has specific learning disabilities which require special education and related services.

(4) The institution shall take into account when determining a student's cost of attendance—

(i) The period for which financial assistance is awarded; and

(ii) Whether the student is enrolled on a full-time or less than full-time basis.

(20 U.S.C. 1089)

(b) *Tutition and fees.* (1) An institution shall determine the tuition and fees charged a full-time student by calculating—

(i) The actual amount charged the full-time student for tuition and fees for an academic year; or

(ii) The average amount it charges full-time students for tuition and fees for an academic year.

(2) If an institution establishes its tuition and fee charges on a residency requirement basis (e.g. In-State and Out-of-State) and elects to calculate an average tuition and fee charge, it shall establish a separate average charge for each different residency based classification.

(3) An institution may determine a separate average charge for any other distinct classification upon which it bases tuition and fee charges.

(4) An institution shall determine the tuition and fees charged a less than full-time student by—

(i) Calculating the actual amount it charges the student for tuition and fees for an academic year; or

(ii) Reducing the amount it calculated under paragraphs (b) (1), (2), or (3) of this section to reflect the less than full-time enrollment of that student.

(20 U.S.C. 1089)

(c) *Room and board.* (1) The institution shall calculate a student's room and board allowance as follows—

(i) For a student who has no dependents and lives with his or her parent(s), an allowance of $1,100;

(ii) For a student who has no dependents and lives in institutionally owned or operated housing—

(A) The actual amount charged the student for room and board for an academic year; or

(B) A standard allowance based on the average amount it charges most of its student residents for room and board for an academic year;

(iii) For a student who has no dependents and does not live with his or her parent(s) or in institutionally owned or operated housing, a standard allowance determined by the institution for room and board for an academic year; or

(iv) For a student who has dependents, an allowance determined by the institution for room and board for an academic year based upon expenses incurred by the student and his or her dependent(s).

(2) For purposes of this section, a spouse is considered a dependent.

(20 U.S.C. 1089)

(d) *Attendance costs for students in correspondence study programs.* The cost of attendance for a student enrolled in a correspondence study program means—

(1) Actual tuition and fees charged to the student for an academic year;

(2) A reasonable allowance determined by the institution for books and supplies for an academic year, if required for the completion of the program; and

(3) If incurred in fulfilling a required period of residential training, expenses for—

(i) Room and board; and

(ii) Travel between the student's residence and the institution.

(20 U.S.C. 1089)

(e) *Attendance costs for students whose program length exceeds the academic year at institutions using clock hours.* The cost of attendance for a student enrolled in an institution measuring progress in clock hours who is charged tuition and fees for a program whose length exceeds the length of the academic year at the institution, is determined by adding—

(1) Tuition and fees×clock hours in the academic year÷clock hours in the program plus

(2) Room and board and other applicable allowances determined under paragraphs (a) and (c) of this section.

(f) *Adjustments.* The institution may, in individual cases, adjust a student's cost of attendance if the cost of attendance calculated under paragraphs (a) through (e) of this section is not a reasonable approximation of the student's actual costs.

(20 U.S.C. 1089(e))

(g) *Required documentation.* An institution must be able to justify and document the cost of attendance figures established under this section.

(20 U.S.C. 1089)

[46 FR 6327, Jan. 19, 1981]

*§ 676.12 Expected family contribution.

(a) *Dependent students.* In determining the amount a dependent student and his or her spouse and parents are expected to contribute to the student's cost of attendance, the financial aid administrator must consider—

(1) Any serious illness in the family. (Family members include the student, the student's parents and spouse, and any other persons the parents may claim as exemptions under the Internal Revenue Code);

(2) The number of the parents' dependent children;

(3) The number of the parents' dependent children attending institutions of higher education;

(4) Tuition costs of dependent children attending elementary and secondary schools; and

(5) Any other circumstances that could affect the ability of the student, the student's spouse, and the student's parents to contribute to his or her cost of attendance.

(b) *Independent students.* In determining the amount an independent student and spouse are expected to contribute to the student's cost of attendance, the financial aid administrator must consider—

(1) Any serious illness in the family. (Family members include the student, his or her spouse, and any other persons the student or spouse may claim as exemptions under the Internal Revenue Code);

(2) The number of the student's dependent children;

(3) The number of the student's dependent children attending institutions of higher education;

(4) Tuition costs of dependent children attending elementary and secondary schools; and

(5) Any other circumstances that could affect the ability of the student or spouse to contribute to the student's cost of attendance.

(c) *Special determination of dependent student-parent relationship.* (1) The student financial aid administrator must determine whether the relationship between a student and his or her parents makes it unreasonable to expect the parents to contribute to the student's cost of attendance, regardless of their ability to do so, if requested by a student who does not—

(i) Live with his or her parents;

(ii) Visit his or her parents for periods longer than typical for other adult family members; or

(iii) Receive gifts from his or her parents more valuable than those typically given to other adult nondependent offspring.

(2) Before determining that it is unreasonable for a parent of a dependent student to contribute to the student's attendance costs, the financial aid administrator must determine whether the student's parents are, in fact, willing to contribute toward those costs.

(3) The student financial aid administrator must make that determination

part of the institution's written record.

(d) *Native American students.* To determine a Native American's expected family contribution, an institution may not consider the following as income or assets of the student or his or her family:

(1) Awards made under the Distribution of Judgment Funds Act (25 U.S.C. 1401 et seq.) or the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(2) Property that may not be sold or encumbered without the consent of the Secretary of the Interior.

(3) Any other property held in trust for the student or his or her family by the U.S. Government.

(e) *Annual determinations.* An institution must determine a student's need at least annually.

(20 U.S.C. 1070b-2)

***§ 676.13 Approved need analysis systems.**

(a) An institution must use a Secretary approved need analysis system or calculation method in complying with the requirements in § 676.12 (expected family contribution).

(b) *Preapproved systems for dependent students.* The Secretary has approved the following systems for dependent students:

(1) The method of computing an expected family contribution used in the Pell Grant Program (34 CFR Part 690).

(2) The income tax system if adjusted to reflect the number of the parents' dependent children who are attending institutions of higher education. The expected family contribution produced under this system is the sum of—

(i) The money the student is reasonably able to contribute;

(ii) The amount of Federal income tax paid by the student's parents;

(iii) 5% of the parents' net assets in excess of $17,000 if there are no farm or business assets; or

(iv) 5% of the parents' net assets in excess of $50,000 if there are farm and business assets. However, no more than $17,000 may be deducted for assets other than farm and business assets.

(c) *Criteria for other systems for dependent students.* (1) The Secretary approves other need analysis systems for dependent students that are properly submitted (see paragraph (e)), if the system produces expected family contribution figures that—

(i) Increase incrementally as the parents' financial strength, measured in constant dollars, increases;

(ii) Are equal for families of equal financial strength; and

(iii) Are within $50 of the expected family contribution figures in 75% of the sample cases supplied by the Secretary.

(2) The Secretary computes the sample cases by:

(i) Deducting from the sum of the parents' adjusted gross income and nontaxable income—

(A) The amount of Federal income taxes and social security taxes;

(B) An 8% allowance on total income for State and local taxes; and

(C) A family maintenance allowance (excluding the student during the academic year) using Department of Labor estimates at a low standard of living;

(ii) Adding to this remainder, 12% of the net market value of the parents' assets, after deducting a standard asset reserve; and

(iii) Applying a rate schedule that the Secretary will publish annually with the sample cases.

(3) (i) In developing sample cases, the Secretary selects cases where the main wage earner is 45 years of age.

(ii) The Secretary does not select cases that involve medical and dental expenses, casualty and theft losses, housekeeping allowances, farm or business assets, more than one family member attending a postsecondary institution as an undergraduate, social security or veteran's benefits, or any unusual circumstances.

(4) In comparing figures from systems submitted for approval with figures from sample cases, the Secretary treats an expected parental contribution of less than zero as zero.

(5) In order to insure measurement in constant dollars, the Secretary revises sample case figures for inflation annually by adjusting—

(i) Deductions for family maintenance;

(ii) The standard deduction from assets; and

(iii) The rate of contribution from income and assets.

(d) *Systems for independent students.* The Secretary approves the following systems for independent students:

(1) The method of computing an expected family contribution used in the Pell Grant program (34 CFR Part 690).

(2) The systems of need analysis for independent students published by those organizations approved for dependent students under paragraph (c).

(e) *Application procedures for system approval.* (1) An organization or individual wishing to have a system for dependent students approved must also submit a system for independent students. Both systems must be submitted to the Secretary by June 30.

(2) The Secretary lists approved systems in the FEDERAL REGISTER by the following September 1.

(3) Applications for approval must include—

(i) Information the Secretary needs to determine whether or not the system meets the requirements of paragraph (c); and

(ii) The expected family contribution amounts produced by that system for sample cases.

(f) *Duration of approval.* (1) There is no specified expiration date for need analysis systems for dependent students approved under paragraph (b).

(2) An institution may use the need analysis systems for dependent and independent students approved under paragraphs (c) and (d) to determine student eligibility and amount of assistance under Campus Based Programs for an academic year that begins—

(i) No earlier than the following June 1; or

(ii) No later than 12 months after that June 1 date.

(g) *Adjustments.* The institution, in individual cases, may further adjust expected family contributions computed according to one of the approved systems if—

(1) The student financial aid administrator believes the expected family contribution does not accurately reflect the student's (or parent's) ability to contribute; and

(2) The institution documents all adjustments in writing with an accompanying explanation and makes them part of the institution's records.

(42 U.S.C. 2754)

§ 676.14 Coordination of student financial aid programs, award amount, and overaward.

(a) *Coordinating official.* An institution must appoint a coordinating official for its SEOG and other Federal and non-Federal student financial aid programs.

(b) *Overaward prohibited, general award.* (1) An institution may not award an SEOG to a student if the SEOG, when combined with all other resources, exceeds the student's financial need. The institution, however, does NOT violate this rule if—

(i) The student receives additional funds after the institution awards aid, and total resources exceed his or her financial need by $200 or less by the end of the academic year; or

(ii) The student earns more money from employment than the institution anticipated when it awarded the SEOG, and it treats the earnings in accordance with paragraph (c) (prevention of overaward).

(2) A student's financial need may not exceed his or her cost of attendance.

(3) If a student's resources exceed his or her need by more than $200, and the excess is not from employment, the overaward is the amount that exceeds the $200.

(c) *Prevention of overaward by treatment of earnings.* An institution must take the following steps when it learns that an SEOG recipient has earned, or will earn, more than $200 over his or her financial need:

(1) It must decide whether the student needs the money to pay for necessary additional educational costs, unanticipated when it awarded financial aid to the student. If the student does, no further action is necessary.

(2) If the student's earnings still exceed need by $200 or more after the institution subtracts any additional costs, it must cancel any unpaid loan or grant (other than Pell Grants) to avoid exceeding need by more than $200.

(3) If the student's earnings still exceed his or her need by more than $200 after the institution takes the steps required in the two preceding subparagraphs, and the student is enrolled for the next academic year, the institution must use the amount that exceeds $200 as—

(i) A resource to help pay the student's cost of attendance in the following year; or

(ii) A substitute for the student's expected family contribution ("EFC") for the current year unless a GSL of PLUS is used for that purpose.

(4) If the student's earnings still exceed his or her need by more than $200 after the institution takes the steps required in subparagraphs (1) and (2), and the student is NOT enrolled for the next academic year, no further action is necessary.

(d) *Resources.* The Secretary considers that "resources" include, but are not limited to, any—

(1) Funds the student is entitled to receive from a Pell Grant, regardless of whether the student applies for it;

(2) Waiver of tuition and fees;

(3) Scholarship or grant, including an SEOG or athletic scholarship;

(4) Fellowship or assistantship;

(5) Insurance programs for the student's education, including any social security educational benefits not included in computing EFC;

(6) GSL or PLUS as indicated under paragraph (e);

(7) Long-term loans, including NDSL but excluding GSL and PLUS, made by the institution;

(8) Net earnings from employment including any part of an independent student's net earnings not included as part of the student's EFC. ("Net earnings" means gross earnings minus taxes and job related costs); and

(9) Veterans benefits (except that part included as part of the student's EFC).

(e) *Treatment of Guaranteed Student Loans (GSL) and Parent Loans for Undergraduate Students (PLUS).* (1) A student may use a GSL or a PLUS as a substitute for his or her expected family contribution.

(2) However, if the loan amounts under one or both of these programs exceeds the student's expected family contribution, the Secretary considers the excess to be a resource.

(f) *Administrative responsibility.* (1) An institution is responsible ONLY for the resources it—

(i) Makes available to its students;

(ii) Knows about; or

(iii) Can reasonably anticipate at the time it awards SEOG funds to the student.

(2) An institution must take reasonable steps to stay informed about the earnings of a student employed outside the institution.

(g) The provisions of paragraph (b) of this section are retroactive to October 12, 1976.

(20 U.S.C. 1070b—1070b-3)

§ 676.15 Coordination with BIA grants.

*(a) To determine the amount of a Supplemental Grant for a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution must prepare a package of student aid—

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with packages prepared for students in similar circumstances who are not eligible for a BIA education grant.

*(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements that package.

(2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.

*(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted and may be deducted only from the other assistance, not the BIA education grant.

(2) The institution must deduct the excess in the following sequence: loans, work-study awards, and grants other than Pell Grants. However, the institution may change the sequence if requested by a student and the institution believes the change benefits the student.

*(d) To determine the financial need of a BIA-eligible student, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(20 U.S.C. 1070b-1)

§ 676.16 Payment of grant.

(a)(1) An institution using a semester, trimester, or quarter system must pay each term a portion of a Supplemental Grant awarded for a full academic year.

(2) The institution determines the amount paid each term by the following fraction:

$$\frac{SEOG}{N}$$

Where SEOG=total SEOG award and N=the number of semesters, trimesters, or quarters in that year.

(3) If the total SEOG award is to a student attending less than a full academic year, the institution determines the amount of each payment by the following fraction:

$$\frac{SEOG}{R}$$

Where SEOG=total SEOG award and R=the number of semesters, trimesters, or quarters remaining in the academic year.

(b)(1) An institution NOT using a semester, trimester, or quarter system must pay a Supplemental Grant at least twice during an academic year.

(2) The institution must make one payment at the beginning and another at the midpoint of the academic year.

(3) The institution may not pay more than half the award before the midpoint payment.

(c)(1) Within each payment period, an institution may pay the student at such time and in such amounts as it determines best meets the student's needs.

(2) It may pay the student directly by check or by crediting his or her account with the institution. However, if it credits the account, the institution must give the student a receipt.

(d) Only one payment is necessary if the total amount the institution awards a student under the Campus Based Programs is less than $301.

(e) A 6 month training program that prepares students for gainful employment in a recognized occupation equals a full academic year for purposes of disbursement.

(f) Before making the first SEOG payment for any year, an institution must get written acceptance of the grant amount from the student and give the student a statement explaining—

(1) The nature and sources of other financial aid made available through the institution; and

(2) That payment of the SEOG depends upon the student's—

(i) Maintaining satisfactory progress in his or her course of study, according to the institution's prescribed standards; and

(ii) Remaining an eligible student.

(g) A correspondence student must submit his or her first completed lesson before receiving an SEOG payment.

(h)(1) An institution may not pay a Supplemental Educational Opportunity Grant unless the student files a statement of educational purpose in which the student declares that he or she will use the grant solely for educational expenses in connection with attendance at the institution.

(2) The Secretary considers the following statement as satisfying this requirement.

Statement of Educational Purpose.

I declare that I will use any funds I receive under the Supplemental Grant Program for expenses connected with attendance at

(Name of institution) ————————

(Dated) ————————————

(Signature) ——————————

(i) If an institution computes a student's need using estimated data submitted before January 1 of the previous award year, the institution may not pay the student an SEOG unless it verifies that information.

(U.S.C. 1070b, 1091)

*§ 676.17 Federal interest in allocated funds.

Except for funds received for the administrative cost allowance (see § 676.18(b)), funds received by an institution under the SEOG program are held in trust for the intended student beneficiaries. Funds may not be used or hypothecated (i.e., serve as collateral) for any other purpose.

(20 U.S.C. 1070b—1070b-3)

§ 676.18 Use of funds.

(a) *General.* Funds allocated to an institution under the SEOG program may be used only to—

(1) Make grants to eligible students;

(2) Transfer to the institution's CWS program (see § 676.21); and

(3) Carry out the activities described in paragraph (b).

(b) *Administrative cost allowance.* An institution participating in the SEOG program is entitled to an administrative cost allowance.

(1) The amount of the allowance equals—

(i) Five (5) percent of the first $2,750,000 of the institution's expenditures in an award year under the CWS, SEOG, and NDSL programs; plus

(ii) Four (4) percent of its expenditures which are greater than $2,750,000 but less than $5,500,000; plus

(iii) Three (3) percent of its expenditures in excess of $5,500,000.

(2) However, for the purpose of calculating the allowance in paragraph (b)(1) of this section, CWS expenditures made under the Community Service Learning program (§ 675.28) or NDSL loans that are assigned to the Secretary under section 463(a)(6)(B) of the Higher Education Act are not included.

(3) An institution must use its administrative cost allowance to offset its costs of administering the Pell Grant, CWS, SEOG, and NDSL programs. Administrative cost also include the expenses incurred for carrying out the student consumer information services requirements of Subpart C of the Student Assistance General Provisions, 34 CFR Part 668.

(4) An institution may not charge any administrative expenses against its SEOG IY allocation for an award year unless it awards initial grants to students for that year. Similarly it may not charge any administrative expenses against its CY allocation for an award year unless it awards continuing grants to students for that year.

(c)(1) An institution may use funds allocated to it for initial and continuing year awards in any manner the institution determines best suits the purposes of the program.

(2) An institution must report initial year expenditures and continuing year expenditures separately on the Fiscal Operations Report required under § 676.19(b).

(d) An institution may use up to 10 percent of its SEOG allocation to make awards to less than half-time eligible students.

(20 U.S.C. 1096; 20 U.S.C. 1070b et seq.)

§ 676.19 Fiscal procedures and records.

*(a) *Fiscal procedures.* (1) In administering its SEOG program, an institution must establish and maintain an internal control system of checks and balances that insures that no office can both authorize payments and disburse funds to students.

(2) A separate bank account for SEOG funds is not required. However an institution must notify any bank in which it deposits SEOG funds of all accounts in that bank in which it deposits Federal funds. The institution may give this notice by either—

(i) Including in the name of the account the fact that Federal funds are deposited; or

(ii) Notifying the bank in writing of the accounts in which it deposits Federal funds. The institution must retain a copy of this notice in its files.

(20 U.S.C. 1070b; 20 U.S.C. 1232c)

(b) *Records and reporting.* (1) An institution must establish and maintain on a current basis financial records that reflect all program transactions. The institution must establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution must also establish and maintain program and fiscal records that—

(i) Identify each student's account and status including separation of initial and continuing grant amounts;

(ii) Show the eligibility of each student aided under the program;

(iii) Show the amount of need and how the need was met for each student; and

(iv) Identify the administrator who determined the need.

(3) Each year an institution must submit a Fiscal-Operations Report plus other information the Secretary requires. The institution must comply with requirements to insure the information reported is accurate and must submit it on the form and at the time specified by the Secretary.

(c) *Retention of records.* (1) *Records.* Each institution must keep intact and accessible records of the receipt and expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent.

*(2) *Period of retention.* Except for audit questions, an institution must keep records for an award year for five years after it submits its Fiscal-Operations Reports for that year.

*(3) *Microfilm copies.* An institution may substitute microfilm copies for original records in meeting the requirements of this section.

*(4) *Audit questions.* An institution must keep records in any claim or expenditure questioned by Federal audit until resolution of any audit questions. However, the institution does not have to retain records beyond 5 years if the actions taken by the United States to recover funds are barred by the Federal statute of limitation in 28 U.S.C. 2415(b).

*(d) *Audits—Federal.* An institution must give the Secretary, the Comptroller General of the United States, or their duly authorized representatives access to the records specified in paragraphs (c) (1) and (2) and to any other pertinent books, documents, papers, and records.

*(e) *Audits—Non-Federal.* (1) An institution must audit, or have audited under its direction, SEOG transactions to determine at a minimum—

(i) The fiscal integrity of financial transactions and reports; and

(ii) If those transactions are in compliance with the applicable laws and regulations.

(2) The audits must be performed in accordance with the Education Department's "Audit Guide" for student financial aid programs.

(3) The institution must have an audit performed at least once every two years unless the Secretary approves a longer interval.

(4) Each audit must cover the entire period of time since the last audit.

*(f) *Audit reports.* The institution must submit audit reports to its local regional office of the Education Department's Office of Inspector General. It must give the Secretary and the Inspector General access to records or other documents necessary to the audit's review.

(42 U.S.C. 1070b; 1232c)

§ 676.20 Maintenance of effort.

(a) For each award year it receives an SEOG allocation, an institution must spend from its own scholarship and student financial aid program at least one-third its aid program expenditures for the three award years preceding the latest of the following:

(1) The effective date of any agreement required by section 443 of the College Work-Study Program (42 U.S.C. 2753) or section 407 of the Educational Opportunity Grants Program (20 U.S.C. 1067) that was in effect on June 30, 1973.

(2) The award year the institution received its first CWS allocation.

(3) The award year the institution received its first Educational Opportunity Grant Program allocation (20 U.S.C. 1061-1067, 1069).

(4) The award year the institution received its first SEOG allocation if it did not participate in the Educational Opportunity Grant Program during the 1972-1973 award year.

(b) The Secretary may waive the maintenance of effort requirements for an award year because of the following special circumstances:

(1) Fund withdrawals from outside sources (Public appropriations are not considered outside sources for public institutions).

(2) An enrollment decline if the institution continues to spend from its own scholarship and student financial aid program the average amount it spent per student during the three-year base period.

(3) Voluntary withdrawal as a GSL lender. The Secretary waives that portion of the failure that equals one-third the amount of loans the institution made as a lender during the three-year base period. However, to have this portion waived, the institution must arrange alternate sources of financing for its students at least equal to the amount the Secretary waives.

(4) Termination as a GSL lender by the Secretary.

(i) The Secretary waives, for the year the institution is terminated as a lender, the portion of the failure that equals one-third the amount of loans the institution made as a lender during the three-year base period.

(ii) The Secretary also waives, for succeeding years, the portion of the failure that equals one-third of the amount of loans the institution made as a lender during the three-year base period if the institution arranges alternate sources of assistance for its students at least equal to the amount the Secretary waives.

(5) The Secretary considers that an institution has provided alternate sources of assistance for its students if it provides the assistance under a written agreement between the funding source and the institution.

(c) An institution, to obtain a waiver, must submit to the Secretary—

(1) A request for a waiver; and

(2) A description of circumstances justifying the waiver.

(d) An institution's "own scholarship and student financial aid program" includes—

(1) Any expenditures of its own funds for scholarships, grants, loans, tuition waivers, fee waivers, and fee remissions;

(2) The institution's employment of its graduate and undergraduate students, whether or not they are eligible for the SEOG or CWS programs; and

(3) Any funds donated to the institution for student financial aid if the institution chooses the recipients and the award amounts. However, the institution may not claim funds from Federal sources as part of its "own scholarship and student financial aid program."

(e) (1) According to an institution's stated practices, scholarships and other student financial aid given to faculty members' dependents or to institution employees may be considered as either—

(i) Student financial aid; or

(ii) Employee benefits.

(2) Fellowships and assistantships count as financial aid unless it is the institution's stated practice to consider the holders faculty members.

(3) Alternatives in subparagraphs (e) (1) and (2) of this section apply to both the base year period and current expenditures. Any change must have the Secretary's written approval.

(20 U.S.C. 1094)

§ 676.21 Transfer of funds.

(a) An institution may transfer up to 10% of its allocation for an award year from its SEOG program to its CWS program and vice versa. The institution must use the funds, when transferred, according to the requirements of the program to which they are transferred.

(b) An institution may transfer SEOG funds without regard to whether they were allocated for initial or continuing grants.

(c) An institution may use CWS funds transferred to the SEOG program for initial or continuing grants, as the institution sees fit.

(d) An institution must report any funds transferred on the Fiscal-Operations Report required under § 676.19(b).

(e) An institution shall transfer back to the CWS program any funds unexpended at the end of the award year that it transferred to the SEOG program from the CWS program.

(20 U.S.C. 1095)

§ 676.22 Duration of student eligibility.

(a) A student is eligible to receive a Supplemental Grant for the period of time needed to complete the first undergraduate baccalaureate course of study being pursued by that student.

(20 U.S.C. 1070b-1)

§ 676.23 Types of grant awards.

(a) An institution may award only one initial grant to a student. The maximum duration of an initial grant is one academic year.

(b) However, if a student receives an initial grant from one institution and transfers to another, the Secretary considers any Supplemental Grant awarded by the second institution to be a continuing grant.

(20 U.S.C. 1070b)

§ 676.24 Amount of grant.

(a) As a general rule, a Supplemental Grant awarded for an academic year equals the amount the institution determines necessary for a student to continue his or her studies. However, no grant may be awarded for a full academic year that is—

(1) Less than $200; nor

(2) More than $2,000.

(b) If a student is enrolled for less than a full academic year, the institution reduces the grant awarded for that period in proportion to the length of the period of attendance compared to the length of the full academic year.

APPENDIX A—ALLOTMENT OF FUNDS TO STATES FOR FISCAL YEAR 1972

Alabama	$1,136,295
Alaska	37,532
Arizona	794,102
Arkansas	645,033
California	8,125,711
Colorado	1,092,555
Connecticut	994,752
Delaware	174,114
District of Columbia	588,884
Florida	2,066,032
Georgia	1,291,155
Hawaii	296,396
Idaho	320,388
Illinois	3,743,393

APPENDIX A—ALLOTMENT OF FUNDS TO STATES FOR FISCAL YEAR 1972—Continued

Indiana	$1,967,198
Iowa	1,331,999
Kansas	1,082,749
Kentucky	1,080,641
Louisiana	1,276,332
Maine	308,431
Maryland	1,168,652
Massachusetts	2,758,217
Michigan	3,339,267
Minnesota	1,663,842
Mississippi	863,948
Missouri	1,754,719
Montana	323,599
Nebraska	713,689
Nevada	116,425
New Hampshire	322,323
New Jersey	1,321,749
New Mexico	412,226
New York	6,234,166
North Carolina	1,783,607
North Dakota	351,555
Ohio	3,568.791
Oklahoma	1,176,300
Oregon	1,035,037
Pennsylvania	3,751,149
Rhode Island	393,990
South Carolina	690,479
South Dakota	347,053
Tennessee	1,398,807
Texas	4,038,448
Utah	781,127
Vermont	236,506
Virginia	1,293,349
Washington	1,525,138
West Virginia	707,338
Wisconsin	1,916,003
Wyoming	151,836
Guam	13,218
Puerto Rico	555,030
Virgin Islands	4,745
Total	75,050,000

PART 682—GUARANTEED STUDENT LOAN PROGRAM

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APPENDIX A—STANDARDS FOR ACCEPTABLE REFUND POLICIES BY PARTICIPATING SCHOOLS

AUTHORITY: Title IV, Part B, of the Higher Education Act of 1965, as amended (20 U.S.C. 1071-1087-4), unless otherwise noted.

SOURCE: 44 FR 53868, Sept. 17, 1979, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

Subpart A—Purpose and Scope

§ 682.100 The Guaranteed Student Loan Program.

(a) The Guaranteed Student Loan Program (GSLP) makes low interest loans available to students to pay for their costs of attending postsecondary schools. Lenders loan their own funds, and the Federal Government or a guarantee agency insures against loss. The program has two parts: guarantee agency programs and the Federal Insured Student Loan Program (FISLP).

(1) State agencies or private nonprofit agencies guarantee loans and are reimbursed by the Secretary for part or all of the insurance claims they pay to lenders. Guarantee agency programs must meet certain Federal requirements, but there may be considerable variation among programs in such areas as loan maximums and student eligibility.

(2) The FISLP operates in States not served by guarantee agencies and in certain prescribed circumstances in which a guarantee agency program does not serve all eligible students in a State. The Secretary directly insures lenders against losses on FISLP loans.

(b) *Participation in the GSLP.* (1) Banks, savings and loan associations, credit unions, pension funds, insurance companies, schools, and State agencies may be lenders. The Student Loan Marketing Association and some State agencies purchase and hold loans and function as secondary markets.

(2) Most colleges, universities, and graduate and professional schools and many vocational, technical, and correspondence schools are eligible to participate as educational institutions.

(3) Students who meet certain requirements, including enrollment at a participating school, may borrow. Information for students about the GSLP is available on request from the Department.

(4) All lenders, schools, and students must meet certain requirements in order to participate in the GSLP. These regulations contain all the eligibility requirements for the FISLP and Federal eligibility requirements for participation in guarantee agency programs. Each guarantee agency may establish additional requirements within these Federal limits.

(c) *Repayment.* The student who borrows under the GSLP is obligated to repay the lender the full amount borrowed, plus interest. Generally the Secretary pays the interest while the student is in school and during certain other periods. The student pays the interest during the time he or she is repaying the loan. When a student leaves school or is enrolled less than half-time, a grace period begins. After the grace period, which may last from 9 to 12 months, the student generally begins repayment. In some cases repayment may be deferred for a time, but the student still is responsible for repaying the entire loan amount plus interest. The student's obligation to repay is cancelled only if the student dies or becomes totally and permanently disabled or if the loan is discharged in bankruptcy.

(d) *Default.* If a student defaults on a loan, the Secretary or the guarantee agency pays the lender the amount of its loss. The student then owes the debt to the Secretary or the guarantee agency. The Secretary or the guarantee agency actively attempts to collect the debt.

(20 U.S.C. 1071 to 1087-4)

§ 682.101 Guarantee agency programs.

(a) The Secretary pays Federal interest benefits and special allowance to lenders on guarantee agency program loans. The Secretary also pays a GSLP borrower's loan obligation if the borrower dies or becomes totally and permanently disabled or if the loan is discharged in bankruptcy.

(b) The Secretary pays 80 percent of a guarantee agency's default losses under a reinsurance agreement. If the guarantee agency meets additional requirements, the Secretary pays up to 100 percent of the agency's default losses, depending on its default experience.

(c) The Secretary encourages State agencies and private nonprofit agencies to establish adequate loan insurance programs. Federal loan advances are available to help start or strengthen an agency's reserve fund, which backs its loan guarantees. Additional Federal advances are available to help pay insurance claims. Administrative cost allowances are also available to the agencies.

(d) To operate as a guarantee agency under the GSLP and to qualify itself and its lenders for these benefits, an agency's program must meet the requirements under Subparts B, C, D, and F.

(20 U.S.C. 1071, 1072, 1078-1, 1082, 1087, 1087-1)

§ 682.102 Federal Insured Student Loan Program (FISLP).

(a) *Where does the FISLP operate?* The specific conditions under which the FISLP may operate in a State are given in § 682.500. In general, the FISLP is available—

(1) To all lenders in a State if there is no guarantee agency program; and

(2) To specific students and lenders who do not have reasonable access to the guarantee agency program operating in their State.

(b) *Payments to lenders.* Lenders qualify for the payment of Federal interest benefits and special allowance on FISLP loans. The Secretary pays a borrower's loan obligation if the borrower dies or becomes totally and permanently disabled or if the loan is discharged in bankruptcy. The Secretary also pays the lender's insurance claim if the borrower defaults.

(c) To qualify for Federal insurance and for interest and special allowance benefits, the lender must meet certain requirements established by law and these regulations.

(20 U.S.C. 1071 to 1087-4)

§ 682.103 Applicability of subparts of this regulation.

Subpart B contains general provisions that are applicable to all GSLP participants. In addition, guarantee agency programs are subject to Subparts C, D, and F, and the FISLP is subject to Subparts C, E, F, and G. Schools are specifically addressed in Subpart F.

(20 U.S.C. 1071 to 1087-4)

§ 682.104 Prohibitions against discrimination.

This program is subject to the following statutes and regulations:

Subject	Statute	Regulation
Discrimination on the basis of race, color or national origin.	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d-4).	45 CFR Part 80
Discrimination on the basis of sex	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1683).	45 CFR Part 86
Discrimination on the basis of handicap	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).	45 CFR Part 84
Discrimination on the basis of age	The Age Discrimination Act (42 U.S.C. 6101 et seq).	45 CFR Part 90
Discrimination in lending	The Equal Credit Opportunity Act, as amended (15 U.S.C. 1691 et seq.).	12 CFR Part 202

(20 U.S.C. 1221e-3(a)(1))

Subpart B—General Provisions

§ 682.200 General definitions.

Academic year: (a) A period of time, typically eight or nine months, in which a full-time student is expected to complete the equivalent of at least two semesters, two trimesters or three quarters at a school using credit hours; or

(b) At least 900 clock hours of training for a program at a school using clock hours; or

(c) Eighteen months for a correspondence program.

Act: Title IV, Part B of the Higher Education Act of 1965, as amended (20 U.S.C. 1071 *et seq.*).

Allowable Costs of Attendance: (a) *General.* (1) Except as provided in paragraphs (d) and (e), a student's cost of attendance means—

(i) The tuition and fees charged to a full-time student for an academic year by the institution he or she is attending as determined under paragraph (b);

(ii) An allowance for room and board expenses for an academic year, as determined under paragraph (c);

(iii) A reasonable allowance determined by the institution for books and supplies for an academic year;

(iv) A reasonable allowance determined by the institution for transportation for an academic year. This allowance may include—

(A) The cost of travel between the student's residence and the institution; and

(B) The cost of travel required for completion of a course of study;

(v) A reasonable allowance determined by the institution for miscellaneous personal expenses for an academic year;

(vi) A reasonable allowance determined by the institution for an academic year for expenses related to study abroad for students enrolled in an academic program which normally includes a formal program of study outside the United States;

(vii) A reasonable allowance determined by the institution for expenses for an academic year related to child care for a student's dependent children; and

(viii) A reasonable allowance determined by the institution for a handicapped student's expenses for an academic year related to his or her handicap, if these expenses are not provided for by any other assisting agency or program. This allowance may include expenses related to special services, transportation, equipment and supplies.

(2) If another agency or program provides assistance for any expenses related to a student's handicap, thereby reducing the student's costs, the institution shall document such assistance as part of the student's financial aid record.

(3) For purposes of this section, a handicapped student is a student who meets the definition contained in section 602(1) of the Education of the Handicapped Act. Accordingly, a handicapped student is a student who is mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, or orthopedically impaired, or is otherwise health impaired or has specific learning disabilities which require special education and related services.

(4) The institution shall take into account when determining a student's cost of attendance—

(i) The period for which the loan is intended; and

(ii) Whether the student is enrolled on a full-time or less than full-time basis.

(20 U.S.C. 1089)

(b) *Tuition and fees.* (1) An institution shall determine the tuition and fees charged a full-time student by calculating—

(i) The actual amount charged the full-time student for tuition and fees for an academic year; or

(ii) The average amount it charges full-time students for tuition and fees for an academic year. If the institution selects this option, it must determine an average cost for each of the following categories of students:

(A) Undergraduate students;

(B) Graduate students; and

(C) Professional students.

(2) If an institution establishes its tuition and fee charges on a residency requirement basis (e.g. In-State and Out-of-State) and elects to calculate an average tuition and fee charge, it shall establish a separate average charge for each different residency based classification.

(3) An institution may determine a separate average charge for any other distinct classification upon which it bases tuition and fee charges.

(4) An institution shall determine the tuition and fees charged a less than full-time student by—

(i) Calculating the actual amount it charges the student for tuition and fees for an academic year; or

(ii) Reducing the amount it calculated under paragraphs (b) (1), (2), or (3) of this section to reflect the less than full-time enrollment of that student.

(20 U.S.C. 1089)

(c) *Room and board.* (1) The institution shall calculate a student's room and board allowance as follows—

(i) For a student who has no dependents and lives with his or her parent(s), an allowance of $1,100;

(ii) For a student who has no dependents and lives in institutionally owned or operated housing—

(A) The actual amount charged the student for room and board for an academic year; or

(B) A standard allowance based on the average amount it charges most of its student residents for room and board for an academic year;

(iii) For a student who has no dependents and does not live with his or her parent(s) or in institutionally owned or operated housing, a standard allowance determined by the institution for room and board for an academic year; or

(iv) For a student who has dependents, an allowance determined by the institution for room and board for an academic year based upon expenses incurred by the student and his or her dependent(s).

(2) For purposes of this section, a spouse is considered a dependent.

(d) *Attendance costs for students in correspondence study programs.* The cost of attendance for a student enrolled in a correspondence study program means—

(1) Actual tuition and fees charged to the student for an academic year;

(2) A reasonable allowance determined by the institution for books and supplies for an academic year, if required for the completion of the program; and

(3) If incurred in fulfilling a required period of residential training, expenses for—

(i) Room and board; and

(ii) Travel between the student's residence and the institution.

(20 U.S.C. 1089)

(e) *Attendance costs for students whose program length exceeds the academic year at institutions using clock hours.* The cost of attendance for a student enrolled in an institution measuring progress in clock hours who is charged tuition and fees for a program whose length exceeds the length of the academic year at the institution, is determined by adding—

(1) Tuition and fees × clock hours in the academic year ÷ clock hours in the program plus

(2) Room and board and other applicable allowances determined under paragraphs (a) and (c).

(f) *Required documentation.* An institution must be able to justify and document the cost of attendance figures established under this section.

(20 U.S.C. 1089)

Anticipated graduation date: The date indicated by the school, at the time the student applies for a GSLP loan, as the date on which he or she will graduate from that school.

Clock hour: A period of time that is the equivalent of—

(a) A 50 to 60 minute class, lecture, or recitation; or

(b) A 50 to 60 minute faculty supervised laboratory, shop training, or internship.

Commercial lender: A commercial bank, savings and loan association, credit union, or mutual savings bank.

Default: The failure of a borrower to make an installment payment when due, or to meet other terms of the promissory note under circumstances where the Secretary or the pertinent guarantee agency finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay, provided that this failure persists for—

(a) 120 days for a loan repayable in monthly installments; or

(b) 180 days for a loan repayable in less frequent installments.

Disbursement: The transfer by a lender of funds to a borrower by means of issuing a check or draft payable to the order, and requiring the personal endorsement, of the borrower.

Due diligence: The utilization by a lender, in the making, servicing and collection of GSLP loans, of practices at least as extensive and forceful as those generally practiced by financial institutions for consumer loans. The procedures for establishing due diligence under the FISLP are described in §§ 682.509, 682.510, and 682.511. The procedures for establishing due diligence under a guarantee agency program are set forth by the guarantee agency.

Enrolled: The status of a student who—

(a) Has completed the registration requirements at the school he or she is attending and has commenced the attendance period; or

(b) Has been admitted into a correspondence study program and has submitted one lesson, completed by him or her after acceptance for enrollment and without the help of a representative of the school.

Estimated financial assistance: For the period for which a loan is sought, the estimated amount of assistance that a school is aware a student has been or will be awarded in Federal, State, or privately supported scholarship, grant, work, or loan programs. The following may not be considered financial assistance:

(a) Veterans' benefits.

(b) Students' benefits under Social Security.

(c) Resources or financial support from the student or the student's family.

Full-time student: (a) A student enrolled in an institution of higher education (other than a correspondence school) who is carrying a full-time academic workload as determined by the school, under standards applicable to all students enrolled in that student's particular program. The student's workload may include any combination of courses, work experience, research, or special studies, whether or not for credit, that the school considers sufficient to classify the student as a full-time student; or

(b) A student enrolled in a vocational school (other than a correspondence school) who is carrying a workload of not less than 24 clock hours per week or 12 semester or quarter hours of instruction, or its equivalent.

Grace period. (a) A 9- to 12-month period before the borrower enters the repayment period. Unless a student is enrolled in a correspondence study program, the grace period begins on the day the student ceases to be at least a half-time student at a participating school. The length of the grace period is determined by the lender for loans made under the FISLP and by the pertinent guarantee agency for loans insured under a guarantee agency program. The grace period for a student enrolled in a correspondence study program begins on the date specified in § 682.401(b)(8)(ii) or § 682.507(a)(2).

(b) If a borrower returns to or enrolls at a participating school on at least a half-time basis, except as limited by § 682.401(b)(8)(ii) or § 682.507(a)(2), prior to the expiration of the grace period, the full grace period begins again when he or she again ceases to be at least a half-time student at a participating school.

Graduate or professional student: A student who—

(a) Is pursuing a program, or has a bachelor's degree and is enrolled in courses which are normally part of a program, leading to a graduate or professional degree or certificate at an institution of higher education; and

(b) Has successfully completed the equivalent of at least 3 years of full-time study at an institution of higher education either prior to entrance into the program or as part of the program itself.

Guarantee agency: A State or private nonprofit agency that administers a student loan insurance program.

Half-time student: An enrolled student who is carrying a half-time academic workload as determined by the school, and that amounts to at least one half the workload of a full-time student. A student enrolled solely in an eligible program of study by correspondence is considered a half-time student.

Holder: An eligible lender in possession of a GSLP loan.

Institution of higher education: The requirements that a school must meet to satisfy the statutory definition of this term are set out in section 435(b) of the Act. The term includes public and private nonprofit degree granting institutions.

Lender: A lender, including a subsequent holder, that is—

(a) A National or State chartered bank, a mutual savings bank, a savings and loan association, or a credit union that—

(1) Is subject to examination and supervision in its capacity as a lender by an agency of the United States or of the State in which its principal place of operation is established; and

(2) Does not make or hold loans to students under the GSLP that total more than one-half of its consumer credit loan dollar volume, including home mortgages, unless it is a bank that is wholly owned by a State; or

(b) A pension fund as defined in the Employees Retirement Income Security Act; or

(c) An insurance company that is subject to examination and supervision by an agency of the United States or a State; or

(d) In any State, a single agency of the State or a single private nonprofit agency designated by the State; or

(e) For purposes only of purchasing and holding loans made by other lenders under this program, the Student Loan Marketing Association or an agency of any State functioning as a secondary market; or

(f) A participating school that—

(1) Is not a correspondence school. An eligible school that offers both correspondence study and non-correspondence study programs may be an eligible lender only for students enrolled in the non-correspondence study programs; and

(2) Employs at least one full-time financial aid administrator.

National of the United States: (a) A citizen of the United States.

(b) A person who, though not a citizen of the United States, owes permanent allegiance to the United States.

Origination: A special relationship between a school and a lender, in which the lender delegates to the school substantial functions or responsibilities normally performed by lenders before making loans. In this situation, the school is considered to have "originated" a loan made by the lender. The Secretary determines that "origination" exists if—

(a) A school determines who will receive a loan and the amount of the loan; or

(b) The lender has the school verify the identity of the borrower or complete forms normally completed by the lender.

Participating school: A school that has entered into an agreement with the Secretary under § 682.600 to participate in the GSLP.

School: (a) An educational institution that is—

(1) An institution of higher education or a vocational school; or

(2) With respect to students who are nationals of the United States, a school outside the States that is comparable to an institution of higher education or to a vocational school and that has been approved by the Secretary for purposes of the GSLP.

(b) The term includes only those individual units or programs within a school that have been determined by the Secretary to meet all the requirements for school eligibility.

(c) A school that employs or uses commissioned salespersons to promote the availability of the GSLP is not eligible to participate in the GSLP. For this purpose—

(1) A "commissioned salesperson" is one who receives compensation in any form or amount that is related to, or calculated on the basis of, student applications for enrollment, student enrollments, or student acceptances for enrollment; and

(2) "Promote the availability" means provide prospective or enrolled students with application forms, names of eligible lenders, or other information designed to encourage persons to finance their education with a GSLP loan. This term does not include providing general financial aid information to prospective or enrolled students.

School lender: Any participating school that has been approved as a lender and has entered into a contract of insurance under the FISLP or a guarantee agency program.

State lender: In any State, a State agency or a single, private nonprofit agency designated by the State that has been approved as a lender and has entered into a contract of insurance under the FISLP or a guarantee agency program.

Totally and permanently disabled: Unable to engage in any substantial gainful activity because of a medically determinable impairment that is expected to continue for a long and indefinite period of time or to result in death.

Vocational school: (a) A business or trade school, or technical institution, or other technical or vocational school that—

(1) Is in a State;

(2) Admits as a regular student only a person who—

(i) Has completed or left elementary or secondary school; and

(ii) Has the ability to benefit from the training offered. A school shall develop criteria for determining a student's ability to benefit from the training offered.

(3) Is legally authorized in each State in which it is physically located to provide, and provides within that State, a program of postsecondary vocational or technical education that—

(i) Is designed to provide occupational skills more advanced than those generally offered at the high school level and to fit individuals for useful employment in recognized occupations; and

(ii) Provides no less than 300 clock hours of classroom instruction or its equivalent, or in the case of a program offered by correspondence, requires not less than an average of 12 hours of preparation per week over each 12-week period and completion in not less than 6 months; and

(iii) In the case of a flight school program, maintains current valid certification by the Federal Aviation Administration;

(4) Has been in existence for 2 years or has been specially determined by the Secretary to be a school meeting the other requirements of this paragraph and to be eligible to participate in the GSLP; and

(5) (i) Is accredited by a nationally recognized accrediting agency or association recognized by the Secretary for this purpose; or

(ii) In the case of a public institution offering postsecondary vocational education, is approved by a State approval agency recognized by the Secretary for this purpose; or

(iii) If the Secretary determines that there is no nationally recognized accrediting agency or association qualified to accredit the type of school applying for eligibility, is approved by a State approval agency recognized by the Secretary for this purpose; or

(iv) If the Secretary determines that there is no nationally recognized accrediting agency or association or State approval agency qualified to accredit or approve the type of school applying for eligibility, is approved by the National Advisory Committee on Accreditation and Institutional Eligibility, in accordance with the standards of content, scope, and quality that the Committee prescribes for that purpose. A school that has been approved by the Committee must, in order to remain an eligible school, become accredited within 3 years after the Secretary has designated a nationally recognized accrediting or State approval agency for the type of school applying for eligibility.

(b) For the purpose of this definition, the Secretary publishes a list of nationally recognized accrediting agencies or associations and State approval agencies that the Secretary has determined to be reliable authority as to the quality of education or training offered.

(20 U.S.C. 1071-1087-4; 1088; 1088a; 1088f)

[44 FR 53868, Sept. 17, 1979, as amended at 45 FR 42530, June 24, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980, and further amended at 45 FR 86300, Dec. 30, 1980; 46 FR 6328, Jan. 21, 1981]

§ 682.201 Eligible student.

(a) A student is eligible to receive a GSLP loan if the student—

(1) Is enrolled or accepted for enrollment in a participating school as at least a half-time student;

(i) If currently enrolled, the student must be in good standing and maintaining satisfactory progress as determined by the school;

(ii) If enrolled or accepted for enrollment in a vocational school, the student must be attending neither elementary nor secondary school and have the ability to benefit from the training offered, as required under the definition of "Vocational school" in § 682.200.

(iii) If enrolled or accepted for enrollment in a school outside the United States, the student must be a National of the United States; and

(2) Meets one of the following qualifications:

(i) Is a National of the United States.

(ii) Is a permanent resident of the United States.

(iii) Is in the United States for other than a temporary purpose and can provide evidence from the Immigration and Naturalization Service of his or her intent to become a permanent resident.

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands; and

(3) If enrolled in a flight school program at a vocational school or an institution of higher education,

(i) Plans to pursue or is pursuing a full-time program leading to commercial flight ratings;

(ii) Has completed ground school training or is taking it concurrently with flight training;

(iii) Holds a private pilot's certificate or has sufficient flight hours to qualify for such certificate; and

(iv) Holds at least a Class-II medical certificate; and

(4) Except as provided in paragraph (c), is not in default on any National Defense or Direct Student Loan made by the school in which the student is enrolled or is accepted for enrollment; and

(5) Except as provided in paragraph (c) of this section, is not in default on any GSLP loan received for attendance at that school; and

(6) Except as provided in paragraph (d) of this section, does not owe a refund on a Pell Grant, a Supplemental Grant, or a State Student Incentive Grant received for attendance at the school in which the student is enrolled or is accepted for enrollment.

(b) In determining whether a student is in default on a Guaranteed Student Loan, a school may rely on the student's written statement that he or she is not in default, unless the school has information to the contrary.

(c) A student who is in default on either a National Defense or Direct Student Loan or a Guaranteed Student Loan which was received for attendance at the same school may receive a Guaranteed Student Loan only under the following conditions:

(1) *Guaranteed Student Loan.* A student who is in default on a Guaranteed Student Loan may be eligible for a Guaranteed Student Loan if the Secretary or a guarantee agency (for a loan insured by that guarantee agency) determines that the student has made satisfactory arrangements to repay the defaulted loan.

(2) *National Defense or Direct Student Loan.* A student who is in default on a National Defense or Direct Student Loan may be eligible for a Guaranteed Student Loan if the student has made arrangements, satisfactory to the school, to repay the loan.

(3) The Secretary does not consider a loan made under the National Defense Student Loan, National Direct Student Loan, Guaranteed Student Loan, or Parent Loans for Undergraduate Students Program that is discharged in bankruptcy to be in default for purposes of this section.

(d) A student who receives overpayment on a grant may receive a Guaranteed Student Loan under the following conditions:

(1) *Overpayment of a Basic Grant.* If the student is overpaid on a Basic Grant, that student may still be eligible for a Guaranteed Student Loan if—

(i) The student is otherwise eligible; and

(ii) The overpayment can be eliminated in the award period in which it occurred by adjusting the subsequent Basic Grant payments for that award period.

(2) *Overpayment of a Basic Grant due to school error.* If the student is overpaid as a result of school error, and the overpayment cannot be eliminated by adjusting subsequent Basic Grant payments in the award year, that student may still be considered eligible for a Guaranteed Student Loan if—

(i) The student is otherwise eligible; and

(ii) The student acknowledges in writing the amount of the Pell Grant overpayment and agrees to repay it in a reasonable period of time.

(3) *Overpayment on a Supplemental Grant.* If the student is overpaid on a

Supplemental Grant, that student may still be considered eligible for a Guaranteed Student Loan if—

(i) The student is otherwise eligible; and

(ii) An adjustment in subsequent financial aid payments (other than Pell Grants) eliminates the overpayment in the same award year in which it occurred.

(e) For purposes of this part—

(1) "Overpayment of a grant" means that a student received payment of a grant greater than the amount he or she was entitled to receive;

(2) " Pell Grant" means a grant authorized under Title IV-A-1 of the Higher Education Act of 1965;

(3) "National Defense Student Loan" means a loan made under Title II of the National Defense Education Act;

(4) "National Direct Student Loan" means a loan made under Title IV-E of the Higher Education Act of 1965;

(5) "State Student Incentive Grant" means a grant authorized under Title IV-A-3 of the Higher Education Act of 1965; and

(6) "Supplemental Grant" means a grant authorized under Title IV-A-2 of the Higher Education Act of 1965.

(20 U.S.C. 1077, 1078, 1085, 1088f)

[44 FR 53868, Sept. 17, 1979, as amended at 45 FR 42580, June 24, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980, and further amended at 46 FR 6329, Jan. 21, 1981]

§ 682.202 Permissible charges to students.

(a) *Interest*—(1) *Rate.* Exclusive of any insurance premium, the maximum rate of interest per year that may be charged a student on the unpaid principal balance of any GSLP loan may not exceed 7 percent. The unpaid principal balance of a loan may include capitalized interest under circumstances described in paragraph (a)(3) of this section.

(2) *Method of calculation.* The lender shall calculate the interest from the date of disbursement of funds to the borrower. In calculating the interest, the lender may use either of the following methods:

(i) The "Approximate Time-Ordinary Interest" method; or

(ii) The "Exact Time-Exact Interest" method. Use of the "Banker's Rule" ("Exact Time-Ordinary Interest") is prohibited because this method results in an actual rate in excess of the allowable maximum rate of interest.

(3) *Capitalizing interest*—(i) *General.* (A) "Capitalization" means increasing the unpaid principal of a loan through the addition of accrued interest to the previously unpaid principal balance. This paragraph defines those conditions under which capitalization on a FISLP loan is authorized, for purposes of the special allowance, Federal interest benefits, and a borrower's liability to a lender, and thus the amount of the lender's loss on an insurance claim.

(B) *Guarantee agency programs.* For loans insured under guarantee agency programs, a lender may add accrued interest and unpaid insurance premiums to the borrower's unpaid principal balance as authorized by guarantee agency policy.

(ii) *Instances in which interest on a FISLP loan may be capitalized.* "Capitalization" may take place in the following instances:

(A) If interest has accrued during the in-school or grace periods for a nonsubsidized loan and capitalization is authorized by promissory note.

(B) If interest has accrued during a period of authorized deferment for a nonsubsidized loan.

(C) If interest has accrued during a period of forbearance for a loan.

(D) If interest has accrued during the period from the date the first repayment installment was required until it was made. In cases (A)-(C) a lender may add the accrued interest to the principal only on the date repayment of principal is required to begin or resume. In case (D) a lender may add the accrued interest to the principal only on the date repayment of principal actually begins.

(4) *Payment*—(i) *For subsidized loans.* A borrower is not liable for any portion of the interest on a loan that is payable by the Secretary. The lender may not collect or attempt to collect that portion of the interest from the borrower.

(ii) *For nonsubsidized loans.* Interest is normally payable by the borrower in installments over the life of the loan. However, a lender may permit a borrower to postpone payment of interest at certain times as described in paragraph (a)(3)(ii) of this section or under a guarantee agency's policy. This accrued interest may either be paid when payment of principal begins or resumes or may be capitalized.

(b) *Insurance premium.* (1) The term "insurance premium" covers those charges made by the guarantee agency or the Secretary to the lender to insure the lender of a GSLP loan against losses it may suffer if the borrower defaults or is adjudicated a bankrupt on his or her loan. The insurance premium may also be used by the guarantee agency or the Secretary to cover costs incurred in the administration of the applicable loan insurance program. Premiums may not be retained by the lender to cover the costs of making a loan or for any other purpose.

(2) Specific rules on insurance premiums, including the rate that may be charged the lender and passed on to the borrower, the method of calculation, refund requirements, etc., are contained in § 682.401(b)(12), for loans insured under State or private nonprofit loan insurance programs and § 682.506, for FISLP loans.

(c) *Late charges.* To the extent provided in the promissory note and permitted by State law, the lender may require that the borrower pay a late charge if the borrower fails to pay any or all of a required installment payment within 10 days after its due date or fails to provide written evidence that verifies eligibility for authorized deferment of the payment. The late charge may not exceed 5 cents for each dollar of each installment due or $5 for each installment, whichever is less.

(d) *Collection charges*—(1) *Permissible charges.* If provided in the note, the lender may also require that the borrower pay the lender for certain reasonable costs incurred by the lender or its agent in collecting any installment not paid when due. These costs may include attorney's fees, court costs, telegrams, and long-distance phone calls.

(2) *Non-permissible charges.* No charges other than those authorized by this section may be passed on to the borrower, either directly or indirectly. Examples of charges that are not permitted are as follows:

(i) Normal collection costs associated with preparing letters or notices or making personal contacts or local telephone calls.

(ii) Fees charged by a servicing or collection agency, to the extent they exceed permissible charges.

(iii) Loan origination fees.

(20 U.S.C. 1077, 1078, 1079, 1082, 1087-1)

§ 682.203 Affidavit or statement of educational purpose.

(a) (1) No loan may be insured under this program unless the student affirms or declares that he or she will use the loan proceeds solely for costs of attendance at the school the student is or will be attending.

(2) The student may satisfy this requirement by filing either—

(i) A notarized affidavit; or

(ii) A written statement.

(3) The statement or the affidavit must be in a form approved by the Secretary.

(b) The student must file the affidavit or statement with the lender. The lender shall retain a copy of the affidavit or statement as required in § 682.408(a) or § 682.519(a).

(20 U.S.C. 1082, 1088g; 28 U.S.C. 1746)

[45 FR 42580, June 24, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 682.204 Treatment of refunds by lenders.

(a) A lender shall treat a payment of a borrower's refund received from a school as a credit against the amount owed by the borrower on the GSLP loan.

(b) If a lender receives from a school a refund payment on a loan that is no longer held by that lender, the lender shall—

(1) Transmit the amount of the refund payment to the holder to whom it assigned the loan, with an explanation of the payment's source; and

(2) Provide simultaneous written notice to the borrower that a payment has been transferred to the new holder.

(20 U.S.C. 1082)

§ 682.205 Prohibited transactions.

(a) (1) No points, premiums, payments, or additional interest of any kind may be paid or otherwise extended to any eligible lender or other party in order to—

(i) Secure funds for making GSLP loans; or

(ii) Induce a lender to make loans to the students of a particular school or to any particular category of students.

(2) The following are examples of transactions which, if entered into for the purposes described in paragraph (a)(1) (i) or (ii) of this section, are prohibited:

(i) Cash payments by or on behalf of a school made to a lender or other party.

(ii) The maintaining of a compensating balance by or on behalf of a school with a lender.

(iii) Payments ostensibly made for other purposes.

(iv) Payments by or on behalf of a school to a lender of servicing costs on loans that the school does not own.

(v) Payment by or on behalf of a school to a lender of unreasonably high servicing costs on loans that the school does own.

(vi) Purchase by or on behalf of a school of stock of the lender.

(b) Except when purchased by the Student Loan Marketing Association or an agency of any State functioning as a secondary market or in other circumstances approved by the Secretary, notes, or any interest in notes, shall not be sold or otherwise transferred at discount if the underlying loans were made—

(1) By a school; or

(2) To students at a school by a lender having common ownership with that school.

(c) Except to secure a loan from the Student Loan Marketing Association or an agency of a State functioning as a secondary market or in other circumstances approved by the Secretary, a school, or a lender with respect to a loan made to a student of a school having common ownership with the lender, may not pledge a loan made under the GSLP as security for any loan bearing aggregate interest and other charges in excess of the sum of 7 percent plus the rate of the then most recently prescribed special allowance under § 682.301.

(d) The prohibitions described in paragraphs (a), (b), and (c) of this section apply to any school or lender which would be a party to the proscribed transactions.

(e) The performance by a school of substantial functions or responsibilities normally performed by a lender which results in the school "originating" loans made by the lender is not a prohibited transaction.

(f) *Warranty.* (1) Nothing in this section shall preclude a buyer of loans made by a school from obtaining a warranty from the seller of those loans.

(2) The warranty may cover future reductions by the Secretary or a guarantee agency in computing the amount of insurable loss, if any, on default claims filed on the loans where the reductions are attributable to an act or failure to act of the seller or previous holder.

(3) The warranty shall not cover matters for which a purchaser is charged with responsibility under this Part, such as due diligence in collecting loans.

(g) Section 440(d) of the Act provides that any person who knowingly and willfully makes an unlawful payment to an eligible lender as an inducement to make, or to acquire by assignment, a loan insured under the GSLP shall, upon conviction thereof, be fined not more than $1,000 or imprisoned not more than one year, or both.

(20 U.S.C. 1082)

Subpart C—Federal Payments of Interest and Special Allowance

§ 682.300 Payment of interest benefits.

(a) *General.* The Secretary pays to a GSLP lender a portion of the interest on a loan on behalf of an otherwise eligible borrower. This payment is known as interest benefits.

(b) *Borrower eligibility.* (1) To qualify for interest benefits the borrower shall submit an application to the lender containing a statement from the borrower's school that certifies—

(i) The borrower's estimated cost of attendance; and

(ii) The borrower's estimated financial assistance.

(2) For the GSLP borrower whose loan was disbursed prior to November 1, 1978, eligibility for interest benefits was established by the law in force at the time the loan was disbursed.

(c) *Lender's report.* To receive payment of interest benefits, a lender shall submit periodic reports to the Secretary. These reports must be in a form prescribed by the Secretary. Based on these reports, the Secretary determines the amount of interest benefits to pay the lender.

(d) *What interest may be paid?* Payment of interest benefits on a loan is limited to—

(1) The interest on the unpaid principal that accrues prior to the beginning of the repayment period for the loan. The repayment period for a GSLP loan begins on the day after the last day of the grace period, whether or not that date is scheduled by the mutual agreement of the lender and the borrower and whether or not repayment actually begins at that time;

(2) The interest that accrues on the unpaid principal during any period in which the borrower has an authorized deferment; and

(3) For loans made or for which a binding commitment was made prior to December 15, 1968, an amount equivalent to 3 percent per year on the unpaid principal amount during the repayment period (excluding any deferment period).

(e) *What interest cannot be paid?* Payment of interest benefits *cannot* include—

(1) Any interest on interest added to principal, except in cases in which interest may be capitalized as provided for in § 682.202(a);

(2) Any interest for which the borrower is not otherwise liable; or

(3) Any interest that is paid on behalf of the borrower by a guarantee agency.

(f) (1) *Termination of interest benefits.* The Secretary's obligation to pay interest benefits on a loan generally terminates upon either—

(i) Determination of the borrower's death;

(ii) Determination of the borrower's total and permanent disability;

(iii) Adjudication of the borrower as a bankrupt; or

(iv) Default by the borrower.

(2) If the borrower dies or becomes totally and permanently disabled prior to the beginning of the repayment period, the Secretary's obligation to pay interest benefits on the loan terminates not later than 120 days following the lender's receipt of a request for a death or disability cancellation.

(20 U.S.C. 1078, 1082)

§ 682.301 Special allowance payments to lenders.

(a) *General.* The Secretary pays a special allowance to lenders on all GSLP loans. The special allowance is equal to a percentage of the average unpaid balance of principal, including capitalized interest, for all GSLP loans a lender has held during a 3-month period. The 3-month periods end (1) March 31; (2) June 30; (3) September 30; and (4) December 31 of each year.

(b) *Lender's reports.* To receive the special allowance payment, a lender shall submit periodic reports to the Secretary stating the average unpaid balance of principal for all its GSLP loans. These reports must be in a form prescribed by the Secretary.

(c) *How will the rate of special allowance be determined?* (1) The percentage rate for the special allowance for a 3-month period is determined by—

(i) Subtracting 3.5 percent from the average of the bond equivalent rates of the 91-day Treasury bills auctioned during the 3-month period;

(ii) Rounding the resulting percent upward to the nearest one-eighth of one percent; and

(iii) Dividing the resulting percent by 4.

(2) After the close of each 3-month period, the Secretary announces the rate of the special allowance for that period.

(d) *How does the lender determine the average unpaid balance of principal?* (1) There are two methods a lender may use to determine the average unpaid balance of principal for purposes of the special allowance:

(i) *The average quarterly balance method.* Add the unpaid balance of principal of all loans outstanding on the first day of the 3-month period and the unpaid balance of principal of all loans outstanding on the last day of the period and divide by 2.

(ii) *The average daily balance method.* Add the unpaid balance of principal of all loans outstanding on each day of the 3-month period and divide by the number of days in that period.

(2) The lender may not change its method of determining the average unpaid balance of principal without the prior approval of the Secretary.

(3) For the purpose of this determination, a loan is considered outstanding if—

(i) The borrower has not repaid the loan;

(ii) The lender has not received payment on a claim for loss on the loan; and

(iii) The lender has not been advised that the Secretary or a guarantee agency has finally refused a claim for loss on the loan.

(20 U.S.C. 1082, 1087-1)

§ 682.302 Payment of interest benefits and special allowance to a lender that makes multiple installment loans.

(a) *General.* The Secretary pays a lender that meets special criteria interest benefits and special allowance on the entire approved amount of a GSLP loan, even though only a portion of the loan has actually been paid to a borrower. For purposes of this payment, the interest benefits and special allowance begin to accrue on the date of disbursement of the first installment of the loan.

(b) *Which lenders are eligible for these payments?* (1) A lender is eligible to receive the special interest and special allowance on a multiple installment loan if the lender—

(i) Is not a school or State agency;

(ii) Has made a binding commitment to make the entire amount of the loan; and

(iii) Is approved to receive these payments by the Secretary.

(2) To be approved by the Secretary, the lender must—

(i) Submit an application on a form provided or approved by the Secretary;

(ii) Agree to disburse the loan in installments as prescribed in paragraph (c) of this section;

(iii) Have been making GSLP loans for at least six months;

(iv) Not have had its lending status limited, suspended, or terminated by the Secretary or a guarantee agency during the three-year period prior to the date of its application; and

(v) Have made, or expect to make within a 12-month period, GSLP loans qualifying for interest benefits amounting to at least one-fourth of one percent of its total assets or $100,000, whichever is less. The 12-month period must include the date on which the lender makes application for approval.

(3) If the Secretary determines that a lender that is making multiple installment loans under this section is not properly administering the disbursement of the loans, the Secretary withdraws his or her approval for the lender to receive the special payments of interest benefits and special allowance.

(c) *Multiple installment disbursement procedures.* A lender shall disburse multiple installment loans in accordance with the following requirements:

(1) Disbursement must be in two or more installments.

(2) No installment can exceed one-half of the loan.

(3) The interval between the first and second installment must be at least one-third of the enrollment period for which the loan is made. However, if the lender determines that the student needs the second installment sooner for the cost of attendance, the lender may disburse the second installment sooner. The lender must document in its records the reason for making an earlier disbursement. For purposes of this paragraph, the period of enrollment may not exceed 12 months.

(d) *Termination of special payments.* The Secretary's obligation to pay interest benefits and special allowance on the undisbursed portion of a multiple installment loan terminates on the date the lender determines that the borrower—

(1) Is no longer enrolled at least half-time at a participating school; or

(2) No longer desires undisbursed loan funds.

(20 U.S.C. 1078, 1082)

§ 682.303 Penalty interest payments to lenders.

(a) *General.* If the Secretary has not authorized the United States Department of the Treasury to pay either interest benefits or special allowance within 30 days after receipt of an accurate, timely and complete request for payment from any lender, the Secretary pays that lender an increased payment known as penalty interest.

(b) *How is the amount of penalty interest determined?* (1) Penalty interest is the daily interest that accrues on the special allowance and interest benefit payments otherwise due to the lender. The daily interest is computed at—

(i) The daily rate of 7 percent; plus

(ii) The annual rate of the special allowance for the 3-month period for which the interest benefits and special allowance are being paid.

(2) The Secretary pays penalty interest for—

(i) The 31st day after receipt of the request for payment or the 31st day after the final day of the period (or periods) covered by the request, whichever is later; and

(ii) Each succeeding day until the Secretary authorizes payment. The day on which payment is authorized is also counted.

(20 U.S.C. 1087-1)

Subpart D—Guarantee Agency Programs

§ 682.400 Agreements between a guarantee agency and the Secretary.

(a) The Secretary enters into agreements with a guarantee agency, enabling the agency to participate in the GSLP, if the Secretary determines that the guarantee agency program meets the requirements of this subpart. Separate agreements, based on various requirements, are necessary for the agency to receive some or all of the benefits available to it.

(b) *Types of agreements.* There are six agreements. Specific requirements for each agreement, and additional requirements for receiving some benefits, are described in this subpart.

(1) *Basic agreement.* A guarantee agency must have a basic agreement to participate in the GSLP in any way. Under this agreement—

(i) Borrowers whose loans are insured may qualify for Federal interest benefits that are paid to the lender on the borrower's behalf;

(ii) Lenders may receive special allowance and penalty interest payments and, through the guarantee agency, death, disability, and bankruptcy claim payments;

(iii) The guarantee agency may apply for the primary administrative cost allowance, and for the agreements listed below.

(2) *Federal advances for reserve fund agreement.* A guarantee agency must have this agreement to receive Federal advances to help establish or strengthen the reserve fund that backs the agency's loan guarantees.

(3) *Additional Federal advances for claim payments agreement.* A guarantee agency must have this agreement to receive Federal advances to pay insurance claims.

(4) *Reinsurance agreement.* A guarantee agency must have a reinsurance agreement to receive reimbursement of 80 percent of its losses on default claims.

(5) *Supplemental reinsurance agreement.* A guarantee agency, with this agreement, receives reimbursement of up to 100 percent of its losses on default claims.

(6) *Secondary administrative cost allowance agreement.* A guarantee agency establishes this agreement by applying for and receiving the secondary administrative cost allowance.

(c) *Failure to comply with agreements.* If the Secretary finds that a guarantee agency has made incomplete or incorrect statements in connection with an agreement, or has failed to comply with an agreement or with applicable Federal law or regulations, the Secretary takes actions necessary to protect the interests of the

United States. These actions may include—

(1) Withholding payments to the guarantee agency;

(2) Requiring reimbursement of payments; or

(3) Suspending or terminating an agreement.

(d) *Remedial actions.* (1) (i) The Secretary or the guarantee agency may terminate any agreement upon 60 days written notice.

(ii) The Secretary terminates an agreement only under circumstances described in paragraph (c) of this section.

(iii) Termination does not affect obligations incurred under the agreement before the effective date of the termination.

(2) The Secretary's suspension or termination of an agreement, requirement of reimbursement, or withholding of payments is not final until the guarantee agency has been given reasonable notice of the intended action and an opportunity for a hearing. The Secretary withholds payments or suspends an agreement prior to giving notice and opportunity for a hearing only if the Secretary finds this emergency action necessary to prevent substantial harm to Federal interests.

(e) The Secretary's execution of an agreement does not indicate acceptance of any current or past standards or procedures used by the agency.

(f) All the agreements are subject to subsequent changes in the GSLP law or regulations.

(20 U.S.C. 1072, 1078, 1078-1, 1082, 1087, 1087-1)

§ 682.401 Basic agreement.

(a) *General.* (1) The basic agreement is required for all participation by a guarantee agency in the GSLP. In this agreement, the guarantee agency assures the Secretary that its program meets the requirements of paragraph (b) of this section and agrees to maintain the administrative and fiscal standards of paragraph (c) of this section.

(2) The basic agreement shall contain other provisions, and be supported by any material, required by the Secretary.

(b) *Program requirements.* The guarantee agency shall ensure, through its policies and the requirements that it imposes on participating lenders, schools, and students, that its program meets the requirements of this paragraph.

(1) *Aggregate loan limits.* The aggregate insured unpaid principal amount for all GSLP loans made to a student may not exceed—

(i) $7,500 to an undergraduate student; or

(ii) $15,000 to a graduate or professional student, including loans made to that student for undergraduate study.

(2) *Annual amounts.* (i) The maximum loan amount authorized for any one academic year must be at least $1,000, but not more than $2,500 to an undergraduate student and $5,000 to a graduate or professional student. Exceptions to this rule for certain loans are contained in paragraph (b)(3) of this section.

(ii) If the program insures loans to half-time students, its loan maximum must be at least $500 for a half-time student in any academic year.

(iii) A guarantee agency does not violate paragraph (b)(2)(i) or (ii) of this section if it makes the maximum loan amounts listed in those paragraphs applicable to either of the following periods:

(A) A period that does not exceed 12 months; or

(B) A period in which the borrower earns the credits required by the borrower's school to advance in academic standing, as normally measured on an academic year basis (for example, from freshman to sophomore).

(iv) In no case may the amount of a loan exceed the student's estimated cost of attendance less estimated financial assistance.

(3) *Special rules for a loan made by a State lender or a loan made or originated by a school.* The maximum loan amount shall be further limited to—

(i) The lesser of $2,500 or half the estimated cost of attendance, for a loan made by a State lender or made or originated by a school to a student who—

(A) Is enrolled in the first academic year of undergraduate study; and

(B) Was not previously enrolled in an undergraduate program; and

(ii) $1,500 for a loan made or originated by a school to a student who is enrolled in the first academic year of undergraduate study and was not previously enrolled in an undergraduate program, unless the loan is to be disbursed in two or more installments. None of the installments may exceed one-half of the loan, and the interval between the first and second installments must be at least one-third of the academic period for which the loan is intended. However, a loan that is to be made for a single academic period of less than 5 months is not subject to these requirements. For purposes of this paragraph, all loans made within a period of 90 days will be considered a single loan.

(4) *Student eligibility.* (i) A student in any year of study at a participating school shall be eligible for a loan.

(ii) Loans must be available to any student for at least 6 academic years of study or the equivalent.

(5) *Student responsibilities.* (i) The student shall promptly notify the lender of any change of address.

(ii) The student shall give the lender, as part of the loan application process—

(A) An affidavit or statement, described in § 682.203, that the loan will be used for the cost of attendance;

(B) Information from the student that provides a basis for determining that the student qualifies as an eligible student;

(C) Information from the school that provides a basis for determining that the student qualifies as an eligible student; and

(D) Information concerning the student's outstanding GSLP loans.

(6) *Disbursement requirements.* (i) The lender shall disburse the loan funds by means of a check payable to the borrower or—if authorized by the borrower in writing, jointly to the borrower and the school that he or she is to attend. The check must require the personal endorsement of the borrower. For this purpose, a check is a draft drawn on a bank and payable on demand and deposit of the check by the borrower in his or her own account at a bank or other financial institution constitutes endorsement.

(ii) The borrower must personally endorse the check and may not authorize anyone else to endorse it on his or her behalf.

(iii) Neither a lender nor a school may obtain a borrower's power of attorney or other authorization to endorse a check on behalf of a borrower.

(iv) The lender may not disburse loan funds earlier than is reasonably necessary to meet the borrower's cost of attendance for the period for which the loan is intended.

(7) *School notification requirements.* For each loan insured, as a condition of insurance, the school that certified the borrower's enrollment shall be notified of the insurance, the amount of the loan, and the name of the lender.

This notification may be made either—

(i) By the lender or the guarantee agency informing the school of these facts no later than 30 days after the initial disbursement of the loan; or

(ii) By the lender sending all loan checks to the school for delivery to the borrower.

(8) *Commencement of repayment.* (i) Except for a borrower enrolled in a correspondence course or as provided in paragraph (b)(8)(iii) of this section, the borrower's repayment period begins no earlier than nine months nor later than one year after the date the borrower ceases to be at least—

(A) A full-time student, if the guarantee agency restricts its program to full-time students; or

(B) A half-time student, if the guarantee agency insures loans to part-time students.

(ii) *Exception for a correspondence student.* The repayment period begins not earlier than nine months nor later than one year after whichever of the following occurs first:

(A) The borrower completes the program.

(B) The borrower falls 60 days behind the due date for a scheduled assignment, according to the schedule required in § 682.604. However, the school may permit one restoration to in-school status for a student who falls 60 days behind the due date for a particular assignment if the student establishes in writing a desire to continue in the program and an understanding that the required lessons must be submitted on time.

(C) The expiration of a 60-day period following the latest allowable date established by the school for completing the program in the schedule required under § 682.604.

(iii) A borrower may request and be granted a repayment schedule that begins prior to the end of the established grace period. In this event, a borrower may not further utilize the 9- to 12-month grace period.

(iv) If conditions that justify a deferment of repayment exist at the expiration of the grace period, the deferment period commences at the expiration of the grace period. Regardless of when a deferment period begins, repayment of the loan begins or resumes after the deferment period is over without any additional grace period.

(9) *Length of repayment period.* In general, the lender must allow the borrower at least 5 years but not more than 10 years to repay a loan, calculated from the beginning of the repayment period. The borrower shall, however, fully repay the loan within 15 years after it is made. There are exceptions, however, to these rules:

(i) If the borrower receives a deferment or has been granted forbearance under procedures approved by the guarantee agency, the periods of deferment or forbearance are not counted in the 5-, 10-, and 15-year periods.

(ii) If the minimum annual repayment required in paragraph (b)(9)(v) of this section would result in complete repayment of the loan in less than 5 years, the borrower is not entitled to the full 5-year period.

(iii) During the grace period, the borrower may request and be granted by the lender a repayment period of less than 5 years. At any time and without the necessity of lender agreement, the borrower may have the total repayment period extended to a minimum of 5 years.

(iv) *Prepayment.* The borrower may prepay the whole or any part of the loan at any time without penalty.

(v) *Minimum annual payment.* During each year of the repayment period, the borrower's payments to all holders of his or her GSLP loans must total at least $360 or the unpaid balance of all the loans including interest, whichever amount is less. There are, however, exceptions to this rule:

(A) If the borrower and lender agree, the amount paid may be less.

(B) If both the borrower and his or her spouse have GSLP loans, their combined annual payment must meet this requirement. The provisions of paragraphs (b)(9)(v)(A) and (B) of this section may not result in an extension of the 10- and 15-year repayment period maximums, unless forbearance has been granted under procedures approved by the guarantee agency.

(10) *Deferment.* Once the repayment period begins principal payments are postponed during specified periods and under conditions described in § 682.508.

(11) *Interest.* (i) Exclusive of any insurance premium, the maximum interest on the unpaid principal balance of a loan may not exceed 7 percent. The unpaid principal balance of a loan may include capitalized interest to the extent authorized by the guarantee agency.

(ii) The borrower shall not be liable for any portion of the interest that is payable by the Secretary, and the lender may not collect or attempt to collect that portion from the borrower.

(12) *Insurance premiums:* (i) The guarantee agency may charge an insurance premium to the lender on each loan. This insurance premium may be used only to insure loans and to cover costs incurred by the guarantee agency in the administration of its loan insurance program. The lender may pass this charge on to the borrower.

(ii) *Rate.* The insurance premium may not exceed one percent per year of the unpaid principal balance of the loan, excluding interest or other charges that may have been added to the principal.

(iii) *Refund requirements.* The length of time for which the premium is charged determines whether a refund must be made.

(A) If the insurance premium is charged for a period extending no longer than 1 year after the borrower's anticipated graduation date, the premium need not be refunded to the borrower even if the borrower graduates or withdraws from school, defaults, dies, becomes totally and permanently disabled, or is adjudicated a bankrupt prior to the anticipated graduation date.

(B) If the insurance premium is charged in advance for a period extending beyond 1 year after the anticipated graduation date, the insurance premium must be refunded to the borrower as required in paragraph (b)(12)(iv) of this section.

(iv) *Computation of refund.* (A) If the borrower graduates or withdraws from school before the anticipated graduation date, the amount of any insurance premium attributable to the repayment period shall be recomputed to take into account the declining principal balance of the loan. Any refund due the borrower as a result of this computation must be treated as prepayment of the insurance premium for later periods, if any premium will be required, or as a repayment of principal.

(B) If a borrower defaults, the amount of any insurance premium attributable to subsequent periods must be credited first to accrued interest and then to the principal balance of the loan.

(C) If the borrower prepays the entire unpaid balance of the loan, the amount of any insurance premium attributable to subsequent periods of two or more years must be refunded to the borrower.

(13) *Insurance liability.* The guarantee agency must insure at least 80 percent of the unpaid principal balance of each loan insured.

(14) *Guarantee agency administration.* In the case of a State loan insurance program, the program shall be administered by a single State agency, or by one or more private nonprofit institutions or organizations under supervision of a single State agency. For this purpose, "supervision" includes setting policies and procedures for, and having full responsibility for, the operation of the program.

(15) *Loan assignment.* A loan may be assigned only to—

(i) An eligible lender; or

(ii) The guarantee agency, in the case of a borrower's default, death, total and permanent disability, or adjudication as a bankrupt.

"Assigned" means any kind of transfer, including transfer as security.

(c) *Administrative and fiscal standards required of the guarantee agency*—(1) *Establishment of procedures.* To enter into a basic agreement, the guarantee agency shall establish administrative and fiscal procedures that the Secretary may require to ensure proper administration of the agency's loan insurance program.

(2) *Dissemination of standards and procedures.* The guarantee agency shall establish and disseminate to concerned parties its standards and procedures for—

(i) School and lender participation in its program;

(ii) Limitation, suspension, or termination of school and lender participation;

(iii) Approval of forbearance;

(iv) Timely filing of default, death, disability, and bankruptcy claims by lenders; and

(v) Due diligence in making, servicing and collecting loans.

(3) *Due diligence.* The guarantee agency shall ensure that due diligence, including resort to litigation as appropriate, will be exercised by lenders in making, servicing, and collecting loans. The guarantee agency also shall exercise due diligence, including resort to litigation as appropriate, in collecting loans on which default claims have been paid. "Due diligence" is defined in § 682.200.

(20 U.S.C. 1078, 1082; 42 U.S.C. 5055(e))

[44 FR 53868, Sept. 17, 1979, as amended at 45 FR 42581, June 24, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 682.402 Death, disability, and bankruptcy payments.

(a) *Loans made prior to December 15, 1968.* If a borrower who received a loan covered by a reinsurance agreement prior to December 15, 1968 dies or becomes totally and permanently disabled, the Secretary reimburses the agency under the provisions of the reinsurance agreement. The agency is not required to seek to recover the amount of its loss from the borrower or the borrower's estate.

(b) *Loans made after December 14, 1968.* (1) If a borrower who received a loan after December 14, 1968 dies or becomes totally and permanently disabled, the Secretary cancels the borrower's obligation by paying the lender the amount owed. If a borrower is adjudicated a bankrupt, the Secretary pays the amount owed. The Secretary cancels these loans whether the holder of the loan is a lender or the guarantee agency.

(2) Any further reference in this section to death and disability claims relates only to loans made after December 14, 1968. Reference to bankruptcy claims relates to all loans, whenever they were made.

(c) The procedures in § 682.514 for determining whether a borrower has died, is totally and permanently disabled, or has been adjudicated a bankrupt, and for handling the loans of such borrowers, apply to guarantee agency programs with the following modifications:

(1) The references to the Secretary in §682.514(a) and (c)(2) shall be understood to mean the guarantee agency if the loan is held by a lender.

(2) References to the FISLP shall be understood to mean the guarantee agency program.

(3) References to the lender shall be understood to mean the guarantee agency if the loan is held by a guarantee agency.

(d) No death, disability, or bankruptcy claim may be paid if the loan is not considered insurable by the guarantee agency or if a default claim for that loan previously has been disapproved by the guarantee agency.

(e) *Claim procedures for loans held by a lender*—(1) *Claim submission.* (i) The lender shall submit evidence that the borrower has died, become totally and permanently disabled, or been adjudicated a bankrupt to the guarantee agency. The agency shall return to the lender any submission that is not accurate and complete.

(ii) After determining that a claim is valid the guarantee agency may pay the lender the amount authorized by paragraph (e)(2) of this section. The Secretary periodically reimburses the guarantee agency for these payments.

(2) *Amount of claim payment.* The Secretary determines the amount of the loss to be paid the lender according to the standards used to determine claim payments under the FISLP. These are found in § 682.517 (a)(2)(ii) and (3), and (b), with the following modifications:

(i) References to FISLP insurance shall be understood to mean guarantee agency insurance.

(ii) Paragraph (b)(1)(ii) of § 682.517 shall be understood to mean the period prescribed by the guarantee agency.

(iii) References to the Secretary shall be understood to mean the guarantee agency in paragraphs (b)(1) (iii) and (iv) of § 682.517.

(f) *Claim procedures for loans held by the guarantee agency.*

(1) The Secretary pays a death, disability, or bankruptcy claim on a loan held by the guarantee agency after payment of a default claim to the lender only if—

(i) The borrower dies, becomes totally and permanently disabled, or is adjudicated a bankrupt within 15 years of the date the loan was made, exclusive of periods of deferment or periods of forbearance granted by the lender that extend the 15-year period;

(ii) The guarantee agency has not written off the loan as uncollectible; and

(iii) The guarantee agency exercised due diligence in the collection of the loan until the borrower died, became totally and permanently disabled, or was adjudicated a bankrupt.

(2) *Amount of claim payment.* (i) The Secretary pays the guarantee agency the amount owed on the loan, including accrued interest. The Secretary pays interest that accrues for a period of up to 60 days from the date the guarantee agency determines that the borrower is dead, totally and permanently disabled, or adjudicated a bankrupt until the guarantee agency submits the claim to the Secretary. The amount of the payment is reduced by the amount of any reinsurance claim paid by the Secretary for the loan, less any subsequent reimbursement to the Secretary from

amounts collected from or on behalf of the borrower.

(ii) If the guarantee agency receives any payments from or on behalf of the borrower on a loan on which the Secretary paid a bankruptcy claim, the guarantee agency shall submit 100 percent of these payments to the Secretary.

(3) If a loan that the Secretary has paid as a bankruptcy claim under this paragraph is not discharged in bankruptcy it will be treated as a default. The guarantee agency shall pay to the Secretary the difference between the amount received from the Secretary as a bankruptcy claim and the amount it would have received as a default claim. In determining the difference, the guarantee agency shall take into account any payments made by or on behalf of the borrower that the agency would have retained on a default claim but submitted to the Secretary under paragraph (f)(2)(ii) of this section.

(20 U.S.C. 1082, 1087)

§ 682.403 Federal advances for reserve fund.

(a) *General*—(1) *State guarantee agencies.* The Secretary may make an advance to a State guarantee agency to help establish or strengthen the reserve fund that backs the agency's loan guarantees.

(2) *Private nonprofit guarantee agencies.* The Secretary may make an advance to one or more private nonprofit guarantee agencies that operate in a State if, for a fiscal year—

(i) There is no State guarantee agency that has a basic agreement; and

(ii) The Secretary consults the chief executive officer of the State and finds it unlikely that the State will have a student loan insurance program that year.

(3) The Secretary may make an advance both to a State guarantee agency and to one or more private nonprofit guarantee agencies if the Secretary finds that the advances are necessary so that students in each participating school have access to a guarantee agency program.

(b) *Application.* The guarantee agency must apply to the Secretary in order to receive the advance. The application must be submitted in the manner and contain the information that the Secretary requires.

(c) *Formula for State's allotment.* The amount available for each State is determined according to the formula in section 422(b) (2) and (3) of the Act.

(d) *Method and prerequisites for payment.* (1) The Secretary advances a smaller amount for a State than the maximum authorized if the Secretary finds that the maximum amount is not needed. The Secretary bases this finding on the expected demand for loans in the State and other relevant factors.

(2) To receive an advance the guarantee agency must demonstrate to the Secretary that, unless the advance is made, the agency will be unable to assure its lenders that it could guarantee all eligible loans that lenders intend to make within the next two years. In evaluating a request for an advance, the Secretary will consider—

(i) The extent to which the reserve fund is currently committed to back loan guarantees; and

(ii) The likelihood that the additional advance will result in greater loan accessiblity for eligible students. This demonstration is not required of an agency for the first two years of its operation if the agency first entered into a basic agreement after September 30, 1976 or was not carrying on an active loan insurance program on that date.

(e) *Matching requirement.* The agency must match an advance by the Secretary with an equal amount from non-Federal sources, which may include the unencumbered non-Federal portion of a reserve fund. The term "unencumbered non-Federal portion" is defined in section 422(a)(2) of the Act.

(f) *Terms and conditions of advance.* The Secretary makes the advance on terms and conditions specified in an agreement between the Secretary and the guarantee agency that includes the following provisions:

(1) The guarantee agency shall maintain a separate account within its reserve fund, to which it shall credit the advance (and required matching funds) plus other sums that are—

(i) Appropriated by a State for loan insurance purposes;

(ii) Received by the guarantee agency as loan insurance premiums;

(iii) Received by the guarantee agency through gift, grant, or other means for loan insurance purposes;

(iv) Collected on defaulted loans, including reinsurance payments by the Secretary; or

(v) Derived from investment of these funds.

(2) The fund to which advances are credited may be used only to—

(i) Guarantee loans to students covered by the guarantee agency program;

(ii) Pay insurance claims;

(iii) Refund overpayment of insurance premiums; or

(iv) Repay advances or reinsurance payments made by the Secretary.

However, there is one exception to this rule: Loan insurance premiums and interest or investment earnings of the fund may also be used for payments necessary for the proper administration of the guarantee agency's program.

(3) Loan insurance premiums may not be used to provide lenders with a greater yield or for making incentive payments to lenders.

(4) The guarantee agency shall invest the fund only in low-risk securities, and shall exercise the judgment and care in this investment that persons of prudence exercise in the permanent disposition of, rather than speculation with, their own funds.

(5) The Secretary may require the guarantee agency to repay part or all of the advance when the Secretary finds that the funds advanced are no longer required for the guarantee agency to maintain an adequate reserve. In making this finding, the Secretary considers—

(i) The maturity and solvency of the reserve fund; and

(ii) The agency's requirements for new loan guarantees, based on its prior experience.

(20 U.S.C. 1072, 1082)

§ 682.404 Additional Federal advances for claim payments.

(a) *General*—(1) *State guarantee agencies.* To the extent that funds are appropriated by Congress for this purpose, the Secretary makes an advance to a State guarantee agency that has a reinsurance agreement. The advance may be used only to pay insurance claims.

(2) *Private nonprofit guarantee agencies.* (i) The Secretary may make an advance to one or more private nonprofit guarantee agencies in a State in a fiscal year only if the agency has a reinsurance agreement and, for that fiscal year—

(A) The State does not have a guarantee agency program; and

(B) The Secretary consults the chief executive officer of the State and finds it unlikely that the State will have such a program that year.

(ii) A private nonprofit agency shall—

(A) Agree to establish at least one office in the State with sufficient staff to handle written and telephone inquiries from students, eligible lenders, and other persons in the State;

(B) Agree to encourage maximum commercial lender participation within the State, and to conduct periodic visits to at least the major lenders within the State;

(C) Agree that its insurance will not be denied any student because of his or her choice of schools or lack of need; and

(D) Certify that it is not an eligible educational institution and that it does not have substantial affiliation with an eligible educational institution.

(b) *Application.* The guarantee agency must apply in order to receive an initial advance. The application must be submitted as prescribed by the Secretary. A subsequent advance does not require an additional application by the agency but does require submission of the data required to compute the amount of the advance.

(c) *Number of payments.* (1) *Established agencies.* (i) If the guarantee agency, before October 12, 1976 was actively carrying on a program for which it had a basic agreement in effect, an advance may be made to that agency for each of three consecutive calendar years.

(ii) The agency may request the date of the first advance. The Secretary authorizes the subsequent advances for payment on the same day of the year that the initial advance was made.

(iii) An additional advance may be made to a private nonprofit agency only if the agency continues to qualify under paragraph (a) of this section.

(2) *New agencies.* (i) If the guarantee agency enters into a basic agreement on or after October 12, 1976, or if the agency was not actively carrying on a program covered by a basic agreement on or before that date, an advance may be made to that agency for each of five consecutive calendar years.

(ii) The guarantee agency may request the date of the first advance. The Secretary authorizes the subsequent advances for payment on the same day of the year that the initial advance was made.

(iii) An additional advance may be made to a private nonprofit agency only if the agency continues to qualify under paragraph (a) of this section.

(d) *Amount of advance.* The amount of the advance is determined according to the formula in section 422(c)(2) of the Act.

(e) *Terms and conditions of the advance.* The Secretary makes an advance on terms and conditions specified in an agreement between the Secretary and the guarantee agency that includes the following:

(1) The guarantee agency shall maintain a separate account within its reserve fund to which it shall credit the advance.

(2) The guarantee agency shall use the earnings, if any, on investment of the advance only for paying insurance claims.

(3) The guarantee agency shall repay the advance when the total amount advanced exceeds 20 percent of the guarantee agency's outstanding insurance obligation. The guarantee agency shall repay the excess over 20 percent to the Secretary at the beginning of the next fiscal year. For this purpose, a guarantee agency's "outstanding insurance obligation" is the total principal amount of loans covered by the agency's basic agreement minus—

(i) The total principal amount of loans that have been fully repaid by the borrower, the guarantee agency, or the Secretary; and

(ii) Loans that have been cancelled.

In the case of a private nonprofit guarantee agency, these amounts are determined separately for each State for which the agency has received an advance under this section.

(20 U.S.C. 1072, 1082)

§ 682.405 Federal reinsurance agreement.

(a) The Secretary may enter into a reinsurance agreement with a guarantee agency that has a basic agreement. Under a reinsurance agreement, the Secretary will reimburse the guarantee agency for 80 percent of its losses on GSLP loans. This agreement is a prerequisite for the supplemental reinsurance agreement under which the Secretary reimburses the guarantee agency for up to 100 percent of its losses.

(1) *Definition of losses.* In this section, "losses" means the amount the agency pays a lender for a default claim minus payments made by, or on behalf of, the borrower after the lender's claim is paid and before the Secretary reimburses the agency. Losses may include unpaid principal and accrued interest.

(2) *Exclusion.* Death and disability claims on loans made after December 14, 1968, are not covered by the reinsurance agreement. Claims on loans to borrowers adjudicated bankrupt also are not covered. Those claims are paid under § 682.402.

(b) The Secretary will enter into a reinsurance agreement only if the agreement would be consistent with any State laws or regulations, and agreements between lenders and the guarantee agency, regarding the maintenance of the guarantee agency's reserve fund.

(c) The Secretary may find that there is a Federal interest in other aspects of the guarantee agency's operations and may review those operations in deciding whether to enter into or extend a reinsurance agreement.

(d) In deciding whether to enter into or extend a reinsurance agreement, or, if an agreement has terminated, whether to make a subsequent agreement, the Secretary may consider the adequacy of—

(1) The lenders' and the guarantee agency's efforts to collect defaulted loans; and

(2) The guarantee agency's efforts to provide GSLP loans for all eligible borrowers.

(e) Losses on loans that are covered by a reinsurance agreement and were outstanding when the reinsurance agreement was entered into are covered by the agreement only if the default occurs after that time or, if later, after the effective date of the agreement.

(f) *Terms and conditions.* The agreement must contain terms and conditions that the Secretary finds necessary to promote the purposes of the GSLP and to protect the United States from unreasonable loss, including the following terms and conditions:

(1) The guarantee agency shall assure the Secretary that, for every reinsurance claim it submits—

(i) The terms of the loan comply with all Federal requirements;

(ii) All reasonable efforts have been made by the lender that submitted the default claim to collect the loan;

(iii) The loan was in default before the lender was paid for the claim; and

(iv) The agency will make all reasonable efforts to collect the loan after the Secretary pays the reinsurance claim.

(2) The Secretary prescribes the documentation required to receive payment, and the manner in which payment is made. The Secretary may subtract amounts owed by the guarantee agency from amounts owed to the guarantee agency.

(3) An amount equal to each reinsurance payment shall be credited promptly by the agency to its reserve fund.

(4) Payments made by the borrower to the guarantee agency on a defaulted loan after the Secretary has paid a reinsurance claim on that loan may be applied first to reduce either the principal or interest owed. The borrower's payments may be applied to other charges, such as late charges or attorney's fees, only after the repayment of all principal and interest. If the borrower's repayment schedule or actual payments result in payments that are too small to pay the interest as it accrues, the guarantee agency shall review the borrower's financial situation at least every six months. If feasible, the agency shall adjust the distribution of each payment between principal and interest so that the principal will be paid within a reasonable time.

(5) The guarantee agency shall pay the Secretary an equitable share of any payment made by or on behalf of a defaulted borrower after the Secretary has reimbursed the agency.

(6) Unless the Secretary approves otherwise, the guarantee agency shall submit the Secretary's equitable share of borrower payments to the Secretary within 60 days of its receipt of the payments.

(7) There is no other subrogation of the United States to the rights of the guarantee agency on any loan that is subject to this agreement.

(8) Nothing in a reinsurance agreement shall be construed to keep a lender from granting forbearance to a borrower under published criteria of the guarantee agency.

(g) The "Secretary's equitable share" of borrower payments is defined in section 428(c)(6) of the Act, and is calculated for a complete fiscal year.

(1) The term "overhead" used in that definition includes space and utilities costs.

(2) By December 31 of the succeeding fiscal year, the guarantee agency must submit to the Secretary, in a manner prescribed by the Secretary, information concerning its total borrower payments received and its total administrative costs of collection of loans and preclaims assistance for default prevention incurred during the fiscal year. If this submission shows that the guarantee agency has not paid all of the "Secretary's equitable share" of borrower payments to the Secretary for the fiscal year, the guar-

antee agency must at that time pay the additional amount due to the Secretary.

(20 U.S.C. 1078, 1082)

§ 682.406 Supplemental Federal reinsurance.

(a) The Secretary may enter into a supplemental reinsurance agreement annually with a guarantee agency that has a reinsurance agreement and that meets the conditions of this section.

(b) *Amount of supplemental reinsurance payments.* (1) The Secretary reimburses a guarantee agency having supplemental reinsurance for 100 percent of its losses, with the following exceptions:

(i) *When reinsurance claims paid by the Secretary to a guarantee agency for any fiscal year reach 5 percent of the "amount of loans in repayment" at the end of the preceding fiscal year.* In this event, the Secretary's reinsurance liability on a claim subsequently paid for that fiscal year will be 90 percent of the amount of the unpaid principal balance plus accrued interest.

(ii) *When reinsurance claims paid by the Secretary to a guarantee agency for any fiscal year reach 9 percent of the "amount of loans in repayment" at the end of the preceding fiscal year.* In this event, the Secretary's reinsurance liability on a claim subsequently paid for that fiscal year will be 80 percent of the amount of the unpaid principal balance plus accrued interest.

(2) *Exception for a new guarantee agency.* For a guarantee agency that entered into a basic agreement after September 30, 1976, or was not actively carrying on a program covered by a basic agreement on October 1, 1976, the Secretary pays 100 percent of its losses for five consecutive fiscal years beginning with the first year of its operation. The Secretary monitors programs of this type and, if an agency does not prudently administer its program, the Secretary may determine that it does not continue to qualify for this exception.

(c) *Definitions.* (1) "Losses" is defined in § 682.405(a).

(2) For purposes of this section, the "amount of loans in repayment" means the original principal amount of all loans insured by the agency minus—

(i) The original principal amount of loans on which—

(A) The borrower has not yet reached the repayment period;

(B) Payment in full by the borrower has been made; or

(C) The borrower was in deferment status at the time repayment was scheduled to begin, and remains in deferment status; and

(ii) The amount paid by the agency for insurance claims on loans.

(d) *Program requirements.* To enter into a supplemental reinsurance agreement, a guarantee agency program must meet the following conditions:

(1) *Annual amounts.* The maximum annual loan amount must be $2,500 for an undergraduate student, and $5,000 for a graduate or professional student, who is carrying at least a half-time workload in an academic year.

(2) *Aggregate loan limits.* The agency shall insure an aggregate unpaid principal amount of $7,500 for an undergraduate student or $15,000 for a graduate or professional student. The $15,000 limit includes loans made to the borrower prior to the borrower's becoming a graduate or professional student.

(3) *Extent of insurance.* The agency shall insure 100 percent of the unpaid principal of loans made by lenders under its program.

(4) *School eligibility.* Except in the case of correspondence schools, the agency's eligibility criteria for schools may not be more stringent than those of the FISLP. However, the agency may exclude a school if—

(i) The school's eligibility is limited, suspended, or terminated by the Secretary under Part 168, or by the agency under comparable standards and procedures; or

(ii) There is a State constitutional prohibition affecting a school's eligibility.

(5) *Out-of-State schools.* The agency shall insure loans made to students who are legal residents of the State where the agency operates, but who attend out-of-State schools. In insuring these loans, the agency shall not impose any restrictions not applicable

to legal residents of the State who attend in-State schools.

(6) *School lender provisions.* (i) The agency shall provide that a school may be a lender under reasonable criteria unless—

(A) The school's lending eligibility has been limited, suspended or terminated by the Secretary under § 682.611 or Subpart G of these regulations or by the agency under comparable criteria and procedures; or

(B) There is a State constitutional prohibition affecting the school's lending eligibility.

(ii) The agency may not insure loans made by school lenders that are not located in the geographic area that the agency serves.

(7) *Reports.* The agency shall agree to report to the Secretary by July 1 of each year regarding—

(i) Its school lender eligibility criteria;

(ii) Its procedures for the limitation, suspension, and termination of school lenders;

(iii) A list of all schools that applied for lender eligibility in the preceding 12 months, and a summary of the actions taken on the applications; and

(iv) A list of all eligible school lenders under the agency's program.

(e) *Terms and conditions.* The supplemental reinsurance agreement will contain, at a minimum, the following terms and conditions, in addition to other provisions of the basic agreement or the reinsurance agreement that the Secretary includes:

(1) *Adherence to qualifying standards.* The agency shall assure that the program requirements of paragraph (d) of this section are continuously met.

(2) *Reports and records.* The agency shall make reports and keep records that the Secretary reasonably requires. It shall give the Secretary access to those records to verify their correctness.

(3) *Application of payments.* If a borrower makes payments on a loan after the Secretary has paid a reinsurance claim on that loan, the agency shall return to the Secretary an equitable share of the payments. The "Secretary's equitable share" is defined in section 428(c)(6) of the Act and is calculated for a complete fiscal year.

(i) The term "overhead" used in that definition includes space and utilities costs.

(ii) By December 31 of the succeeding fiscal year, the guarantee agency must submit to the Secretary, in a manner prescribed by the Secretary, information concerning its total borrower payments received and its total administrative costs of collections of loans and preclaims assistance for default prevention incurred during the fiscal year. If this submission shows that the guarantee agency has not paid all of the "Secretary's equitable share" of borrower payments to the Secretary for the fiscal year, the guarantee agency must at that time pay the additional amount due to the Secretary.

(4) An agreement is renewed only if the agency's program complies with all the terms of the agreement and all pertinent provisions of these regulations.

(5) Before the Secretary pays a supplemental reinsurance claim, the guarantee agency must give the Secretary a statement of its "amount of loans in repayment" at the end of the preceding fiscal year. The method for determining this amount is given in paragraph (c)(2) of this section.

(20 U.S.C. 1078, 1078-1)

§ 682.407 Administrative cost allowances for guarantee agencies.

(a) *General.* To the extent that funds are appropriated by Congress in any fiscal year for this purpose, the Secretary may make payments to a guarantee agency having a basic agreement for the primary and secondary administrative cost allowances.

(1) *Total payments.* Payments of allowances to a guarantee agency for any fiscal year made under paragraphs (b) and (c) of this section do not exceed, for each allowance, one-half of 1 percent of the total principal amount of loans for which the guarantee agency issued insurance during that fiscal year.

(i) If the amount appropriated for any fiscal year is insufficient to pay all guarantee agencies the full amounts for which they would otherwise be eligible, payments to all agencies are proportionately reduced.

(ii) In the event of such an insufficiency, if additional funds become available for making payments for that fiscal year, additional payments are distributed on the same basis as they were reduced.

(2) *Application.* The guarantee agency shall submit an application for each allowance to the Secretary by January 1 of the fiscal year for which it is requesting the allowance. The application must contain information and assurances that the Secretary reasonably requires, including the following—

(i) Information showing the agency's ability to collect loans and provide preclaim assistance to its lenders, including descriptions of staff size and activities in these areas;

(ii) An estimate of the costs that will be eligible for payments under this section (categorized by the types of costs listed in paragraph (a)(3)(i) of this section);

(iii) Assurances that sufficient administrative and fiscal procedures, including an annual independent audit or, if a State guarantee agency is subject to State audit procedures not under its control, a biennial independent audit, will be used to ensure that the administrative allowances are used in accordance with the provisions of this section, and that the audit report will be made available to the Secretary on request;

(iv) Assurances that the guarantee agency will furnish any further information, including estimates, that the Secretary may reasonably require to carry out the provisions of this section;

(v) For the primary allowance application only, an estimate of the total amount of new loan volume expected to be insured during the fiscal year; and

(vi) For the secondary allowance only, assurance that the agency's program—

(A) Meets all the requirements for a supplemental reinsurance agreement; and

(B) Insures loans for students who are not legal residents of the State, but who are attending participating schools in the State other than correspondence schools, without imposing any restrictions not imposed on legal residents of the State who attend schools in the State other than correspondence schools.

(3) *Definitions.* (i) The terms "administrative costs of promotion of commercial lender participation", "administrative costs of collection of loans" and "administrative costs of preclaim assistance for default prevention," as used in paragraphs (b) and (c) of this section, are defined in section 428(f)(3) of the Act.

(ii) The term "overhead costs" used in those definitions includes space and utilities costs.

(b) *Primary allowance*—(1) *Basic qualification.* The agency must have a basic agreement.

(2) *Use of funds.* The primary allowance must be used by the agency to meet administrative costs not taken into account by the agency under the formula for determining the "Secretary's equitable share" of borrower payments made after the Secretary has paid reinsurance claims to the agency.

(i) Except as provided in paragraph (b)(2)(ii) of this section for new agencies, each guarantee agency that receives payments under this paragraph shall apply the payments according to the following distribution—

(A) Not less than one-fourth toward the administrative costs of promotion of commercial lender participation;

(B) Not less than one-half toward the administrative costs of collection of loans and of preclaim assistance for default prevention; and

(C) The balance toward other administrative costs related to the student loan insurance program of the guarantee agency.

(ii) If a guarantee agency enters into a basic agreement after September 30, 1977, or was not actively carrying on its insurance program on October 1, 1977—

(A) The spending minimum described in paragraph (b)(2)(i) of this section, for the administrative costs of collection of loans and preclaim assistance for default prevention does not apply during the first twelve months in which the agency is eligible to receive the advance; and

(B) The spending minimum for these costs is 20 percent of the total primary allowance for each of the next two fiscal years.

(c) *Secondary allowance.* (1) Payment of the secondary allowance is made in addition to payment of the primary allowance.

(2) *Basic qualification.* The agency must have a reinsurance agreement.

(3) *Use of funds.* These payments may be used by the agency only to meet administrative costs of promotion of commercial lender participation, administrative costs of collection of loans, administrative costs of preclaim assistance for default prevention, and other administrative costs related to the student loan insurance program of the guarantee agency. Also, these payments must be used to meet only administrative costs not taken into account by the agency under the formula for determining the "Secretary's equitable share" of borrower payments made after the Secretary has paid reinsurance claims to the agency.

(4) The Secretary's payment of the secondary allowance establishes an agreement between the Secretary and the guarantee agency with respect to the assurances contained in the application.

(20 U.S.C. 1078, 1078-1, 1082)

[44 FR 53868, Sept. 17, 1979, as amended at 45 FR 42581, June 24, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 682.408 Records, reports, and inspection requirements for guarantee agency programs.

(a) *Records.* (1) A guarantee agency shall keep the records specifically required by this section and the records necessary to make reports required by this subpart. The guarantee agency shall retain records for each loan for at least five years after the loan is paid in full or has been determined to be uncollectible. For the purposes of this section, the term "paid in full" includes loans paid by the Secretary on account of the borrower's death, permanent and total disability, or discharge in bankruptcy. These records must be as complete and accurate as is necessary to document fully the agency's reports.

(2) The guarantee agency shall require participating lenders to keep records on guaranteed loans as prescribed by the Secretary. These shall include complete and accurate records of each loan account, showing each transaction and affording ready identification of the borrower's status. A lender shall retain records of a loan for at least five years from the date the loan has been paid in full by the borrower or the lender has been reimbursed for a loss on the loan by the guarantee agency. The Secretary may, in particular cases, require the retention of records beyond this 5-year minimum period.

(3) Guarantee agencies and lenders may store records in microfilm or computer format. However, the lender or guarantee agency holding a promissory note shall retain the actual note until the loan is paid in full or determined by the guarantee agency to be uncollectible. When repayment is complete, the lender or guarantee agency shall return the actual note to the borrower and retain a copy for the prescribed period. If a loan is written off as uncollectible, the original note need not be retained, but a copy must be retained for the prescribed period.

(b) *Reports.* (1) The agency shall submit reports to the Secretary upon request concerning the status of its reserve funds, and the operations of its loan insurance program.

(2) The agency shall submit to the Secretary, at least annually, a report of the total insured loan volume and default volume and rate on all loans insured after December 31, 1976, and on loans insured earlier if data is available, for each of the following categories of lenders:

(i) Schools.

(ii) State or private nonprofit direct lenders.

(iii) Commercial financial institutions (banks, savings and loan associations, or credit unions).

(iv) All other types of institutions or agencies. Loan volume and default data shall be reported according to the category of original lender, not subsequent holder. If a guarantee agency operates in more than one State, a separate report must be submitted for each State of operation.

(3) The agency shall submit to the Secretary its application forms, promissory notes, regulations, and statements of procedures and standards—including standards for due diligence and timely claims filing—as well as other materials that substantially affect the operation of the agency's program, whenever requested to do so by the Secretary and whenever changes or new materials are proposed. The Secretary reviews these materials for administrative and fiscal sufficiency and for conformance to statutory and regulatory provisions.

(4) Lenders shall submit to the agency the information necessary for the agency to complete its reports to the Secretary.

(5) The agency shall submit, or require its lenders to submit, upon the Secretary's request, information the Secretary needs to determine the amount of interest and special allowance to be paid on the agency's insured loans.

(c) *Inspections.* (1) A guarantee agency shall give the Secretary, or other agencies of the government designated by the Secretary, access to its records in order to assure the accuracy of the reports described in paragraph (b) of this section.

(2) A guarantee agency shall provide in its agreement with a lender or in its statements of procedures that the lender shall give the Secretary, or other agencies of the government designated by the Secretary, and the agency access to the lender's records in order to assure the accuracy of the reports required under paragraphs (b) (4) and (5) of this section.

(20 U.S.C. 1072, 1078, 1082)

Subpart E—Federal Insured Student Loan Program

§ 682.500 Circumstances under which loans may be insured under the FISLP.

(a) The Secretary may insure all loans made by lenders located in a State in which—

(1) No guarantee agency program is operating; or

(2) A guarantee agency program is operating but is not reasonably accessible to students who meet the agency's residency requirements.

(b) The Secretary may insure loans made by a lender located in a State where a guarantee agency operates a program that is reasonably accessible to students who meet the residency requirements of that program only under the following conditions:

(1) The Secretary may insure loans to those students who do not meet the agency's residency requirements.

(2) The Secretary may insure all loans made by a lender if the lender is not able to obtain the insurance of the guarantee agency for at least 80 percent of the loans the lender intends to make over a 12-month period because of the agency's residency requirements.

(3) The Secretary may insure further loans to a student, with the approval of the guarantee agency, if that student has previously received a FISLP loan from the same lender that has not been repaid.

(4) If the Secretary finds that—

(i) No single guarantee agency program is reasonably accessible to students at one school, as compared to students at other schools over a comparable period of time; and

(ii) Insuring loans made in the State to students attending that school would significantly increase the access of students at that school to GSLP loans, the Secretary may insure loans made to those students by a lender in that State. This paragraph would apply if—

(A) The guarantee agency in a State did not recognize a school as being eligible but the school was eligible under the FISLP; or

(B) A majority of the persons enrolled at the school met the conditions of student eligibility for FISLP loans, but were not recognized as eligible students under the guarantee agency program.

(c) For purposes of paragraphs (a) and (b) of this section, a lender is considered to be located in the same State as a school if the lender—

(1) Has a relationship with the school such that the school will be

considered to have originated loans made to students at that school;

(2) Has a majority of its voting stock held by the school; or

(3) Has common ownership or management with the school and more than 50 percent of the loans made by that lender are made to students at that school.

(d) As a condition for insuring loans under the FISLP, the Secretary may require the lender to submit evidence that the conditions described in this section exist.

(e) The Secretary only denies loan insurance, because of this section, to a school lender which has entered into an agreement with the Secretary under § 682.601 if the Secretary first determines that all eligible students at that school who make a conscientious effort to obtain a loan from another lender will find a loan to be reasonably available. For purposes of this paragraph, the determination of loan availability is based on studies and surveys which the Secretary considers satisfactory.

(20 U.S.C. 1071, 1073)

§ 682.501 Extent of Federal insurance under the FISLP.

(a) *General rule.* Except as provided in paragraph (b) of this section, the Secretary's insurance liability of any FISLP loan is 100 percent of the unpaid balance of principal and, to the extent permitted under § 682.517, accrued interest.

(b) *Special provisions for State lenders.* (1) Except as described in paragraph (b)(2) of this section, for loans insured after the date described in paragraph (b)(4) of this section, the Secretary's insurance liability is less than 100 percent under the following conditions:

(i) *When all default claims paid by the Secretary to a State lender for any fiscal year reach 5 percent of the "amount of loans in repayment" at the end of the preceding fiscal year.* In this event, the Secretary's insurance liability on a claim subsequently paid for that fiscal year will be 90 percent of the amount of the unpaid principal balance plus accrued interest.

(ii) *When all default claims paid by the Secretary to a State lender for any fiscal year reach 9 percent of the "amount of loans in repayment" at the end of the preceding fiscal year.* In this event, the Secretary's insurance liability on a claim subsequently paid for that fiscal year will be 80 percent of the amount of the unpaid principal balance plus accrued interest.

(2) The potential reduction in insurance liability does not apply to a State lender during the first Federal fiscal year of its operation as a lender under the FISLP, and during each of the four succeeding fiscal years.

(3) For purposes of this section, the "amount of loans in repayment" means the original principal amount of all loans insured by the Secretary minus—

(i) The original principal amount of loans on which—

(A) The borrower has not yet reached the repayment period;

(B) Payment in full by the borrower has been made; or

(C) The borrower was in deferment status at the time repayment was scheduled to begin, and remains in deferment status; and

(ii) The amount paid by the Secretary for insurance claims on loans.

(4) The applicable date for purposes of paragraph (b) of this section is—

(i) The 90th day after the adjournment of the next regular session of the legislature of the State in which the lender is operating that convenes after October 12, 1976; or

(ii) The date one year from that 90th day if the primary source of lending capital for the lender is the sale of bonds, and the constitution of the State in which the lender is operating prohibits a pledge of the State's credit as security against the bonds.

(5) For purposes of this paragraph, payments by the Secretary on a loan that the original lender assigned to a subsequent holder are considered payments made to the original lender.

(20 U.S.C. 1075)

§ 682.502 The application to be a lender under the FISLP.

(a) *General.* To participate in the FISLP, a lender must submit an application to the Secretary. The Secretary responds to the lender's request to participate in the FISLP within 30 days of receipt of an application.

(b) *Criteria for evaluating an application.* In determining whether to enter into an insurance contract with an applicant and what the terms of that contract should be, the Secretary may consider the following criteria:

(1) Whether the applicant is capable of complying with these regulations as they apply to lenders.

(2) Whether the applicant is capable of implementing adequate procedures for making, servicing and collecting loans.

(3) If the applicant has had prior experience with a similar Federal, State or private nonprofit student loan program, the amount and rate of loans that are currently delinquent or in default under that program.

(4) The financial resources of the applicant.

(5) In the case of a school that is seeking approval as a lender, its accreditation status with the preferred condition being accreditation.

(c) The Secretary may require an applicant to submit sufficient materials with its application so that the Secretary may fairly evaluate it in accordance with these criteria.

(d) *Denial of participation.* (1) If the Secretary decides not to approve the application for an insurance contract, the reason for the decision is included in the Secretary's response.

(2) The Secretary provides an opportunity for the lender to meet with a designated Department official if the lender wishes to appeal the Secretary's decision.

(3) However, the Secretary need not explain the reasons for the denial, or grant the lender an opportunity to appeal, if the lender submits its application within 6 months of a previous denial.

(20 U.S.C. 1082)

§ 682.503 The FISLP lender insurance contract.

(a) *Approval of insurance contract.* (1) If the Secretary approves a lender's application to be a FISLP lender, the Secretary and the lender sign an insurance contract. No loan is insured unless covered by an insurance contract.

(2) In general, under an insurance contract the lender agrees to comply with all laws, regulations and other requirements applicable to its participation as a lender in the FISLP, and the Secretary agrees to insure each eligible FISLP loan held by the lender against the borrower's default, death, total and permanent disability, or bankruptcy.

(3) The Secretary's insurance liability is the amount of unpaid principal and interest, except for certain loans made by a State lender as provided in § 682.501(b).

(4) The contract may contain a limit on the duration of the contract and the number or amount of FISLP loans a lender may make or hold.

(b) (1) Except as otherwise approved by the Secretary, an insurance contract with a school lender shall limit the loans made by that school lender which will be covered by Federal loan insurance to those made to students—

(i) Who are in attendance at that school; or

(ii) Who are in attendance at other schools under the same ownership or who are employees, or dependents of employees, of that school lender or those other schools, under circumstances the Secretary considers appropriate for insurance.

(2) A limit imposed under paragraph (a)(4) of this section on a school lender which makes loans to students in attendance at other schools under the same ownership, or to employees or dependents of employees of those other schools, may be imposed on a school-by-school basis.

(20 U.S.C. 1079, 1082)

§ 682.504 Issuance of Federal loan insurance.

(a) *Application for insurance.* A lender having an insurance contract shall submit an application to the Secretary for Federal loan insurance on each intended loan that the lender determines to be eligible for insurance. The application shall be on a form prescribed by the Secretary. The Secretary notifies the lender whether the loan is or is not insurable and the amount of the insurance. No disbursement on a loan made prior to the Secretary's approval of that loan is insurable.

(b) *Conditions of insurance coverage.* The Secretary issues FISLP insurance in reliance on the implied representations of the lender that all requirements for the initial insurability of the loan have been met. As described in § 682.517, the continuance of the FISLP insurance is conditioned upon compliance by all holders of the loan with these regulations. The delegation of functions to a servicing agency or another party does not relieve the lender of its responsibilities in the making, servicing, and collection of a FISLP loan.

(20 U.S.C. 1079, 1082)

§ 682.505 Limitations on maximum loan amounts.

(a) *Annual amounts.* The Secretary does not insure a loan that would exceed the student's estimated cost of attendance for the academic period for which the loan is intended less estimated financial assistance awarded for that period. In addition, the total amount a student may borrow in any academic year of study may not exceed—

(1) $2,500, to a student who has not successfully completed a program of undergraduate study, but no more than—

(i) The lesser of $2,500 or half the estimated cost of attendance, for a loan made by a State lender or made or originated by a school to a student who—

(A) Is enrolled in the first academic year of undergraduate study; and

(B) Was not previously enrolled in an undergraduate program.

(ii) $1,500, for a loan made or originated by a school to a student who is enrolled in the first academic year of undergraduate study and was not previously enrolled in an undergraduate program, unless the loan is to be disbursed in two or more installments. None of the installments may exceed one-half of the loan, and the interval between the first and second installments must be at least one-third of the academic period for which the loan is intended. However, a loan that is to be made to cover the expenses of a single academic period of less than 5 months is not subject to these requirements. For purposes of this paragraph, all loans made within a period of 90 days will be considered a single loan; and

(2) $5,000, to a graduate or professional student.

(b) *Aggregate loan limits.* The Secretary does not insure a loan in an amount which, together with the unpaid principal amount of all other GSLP loans to the student, would result in an aggregate loan amount in excess of—

(1) $7,500, in the case of any undergraduate student; or

(2) $15,000, in the case of any graduate or professional student, including loans for undergraduate study.

(c) *Limitation on loan to a student enrolled in a correspondence course.* The Secretary does not insure a loan to a student pursuing a correspondence course which exceeds the amount of the contract price of the course. If a correspondence course includes a period of required resident training, the Secretary insures additional loan amounts to cover the estimated cost of attendance for that portion of the course.

(20 U.S.C. 1075, 1078, 1079, 1082)

§ 682.506 Insurance premiums.

(a) *General.* The Secretary charges each lender an insurance premium for each loan that is insured.

(b) *Rate.* The rate of the insurance premium is one-fourth of one percent per year of the loan principal, excluding interest or other charges that may have been added to the principal.

(c) *Method of calculation.* (1) The lender shall calculate the insurance premium on the basis of the number of months beginning with the month following the month that funds are disbursed to the borrower and ending 12 months after the borrower's anticipated date of graduation from the school for attendance at which the loan is sought.

(2) *For multiple installments.* In cases where the lender disburses the loan in multiple installments, the insurance premium is calculated for each disbursement from the month

following the month that the disbursement is made.

(d) *Method of payment.* (1) The Secretary may bill the lender for the insurance premium, or may require the lender to pay the insurance premium at the time of disbursement. At the Secretary's discretion, the Secretary may collect the insurance premium by offsetting it against amounts payable by the Secretary to the lender.

(2) Insurance coverage on a FISLP loan ceases to be effective when the lender fails to pay the insurance premium within 60 days of the date payment is due. The Secretary may, however, excuse late payment of an insurance premium, and reinstate the insurance on a loan, if the Secretary is satisfied that—

(i) The loan is not in default and the borrower is not delinquent in making installment payments; or

(ii) The loan is in default, or the borrower is delinquent, under circumstances where the borrower has entered the repayment period without the lender's knowledge.

(e) *Collection from borrowers.* The lender may pass along the cost of the insurance premium to the borrower in the form of a one-time charge. The lender may bill the borrower for the insurance premium or may deduct the amount from the loan proceeds. The lender must clearly identify to the borrower the amount of insurance premium and the method of calculation.

(f) *Refund provisions.* The premium is not refundable by the Secretary, and is not refunded by the lender to the borrower, even if the borrower graduates or withdraws from school, defaults, dies, becomes totally and permanently disabled, or is adjudicated a bankrupt prior to the anticipated graduation date.

(20 U.S.C. 1077, 1079, 1082)

§ 682.507 Repayment of loans.

(a) *Commencement of repayment.* (1) Except for a borrower enrolled in a correspondence course, or as provided in paragraph (a)(3) of this section, a borrower's repayment period begins not earlier than 9 months nor later than one year after the date the borrower ceases to be at least a half-time student at a participating school. This 9-12 month period is commonly called the "grace period."

(2) *Exception for a correspondence student.* The repayment period begins not earlier than 9 months nor later than one year after whichever of the following occurs first:

(i) The borrower completes the program.

(ii) The borrower falls 60 days behind the due date for a scheduled assignment, according to the schedule required in § 682.604. However, the school may permit one restoration to in-school status for a borrower who falls 60 days behind the due date for a particular assignment if the borrower establishes in writing a desire to continue in the program and an understanding that the required lessons must be submitted on time.

(iii) The expiration of a 60-day period following the latest allowable date established by the school in the schedule required under § 682.604 for completing the program.

(3) A borrower may request and be granted a repayment schedule that begins prior to the end of the established grace period. In this event, a borrower may not further utilize the grace period.

(4) If conditions that justify a deferment of repayment exist at the expiration of the grace period, the deferment period commences at the expiration of the grace period. Regardless of when a deferment period begins, repayment of the loan begins or resumes after the deferment period is over, without any additional grace period.

(b) *Length of repayment period.* In general, a lender shall allow a borrower at least 5 years, but not more than 10 years, to repay a loan, calculated from the beginning of the repayment period. The borrower shall, however, fully repay a loan within 15 years after it is made. There are exceptions, however, to these rules:

(1) If the borrower receives an authorized deferment or has been granted forbearance, as described in § 682.512(c), the periods of deferment or forbearance are excluded from determinations of the 5-, 10-, and 15-year periods.

(2) If the minimum annual repayment required in paragraph (d) would

result in complete repayment of the loan in less than 5 years, the borrower is not entitled to the full 5-year period.

(3) During the grace period, the borrower may request and be granted by the lender a repayment period of less than five years. At any time and without the necessity of lender agreement the borrower may have the total repayment period extended to a minimum of five years.

(c) *Prepayment.* The borrower may prepay the whole or any part of a loan at any time without penalty.

(d) *Minimum annual payment.* (1) During each year of the repayment period, a borrower's payments to all holders of his or her GSLP loans must total at least $360 or the unpaid balance of all loans, including interest, whichever amount is less. There are, however, two exceptions to this rule:

(i) If the borrower and the lender agree, the amount paid may be less.

(ii) If both the borrower and his or her spouse have GSLP loans, their combined annual payment must meet this requirement.

(2) The provisions of paragraphs (d)(1) (i) and (ii) of this section may not result in an extension of the 10- and 15-year repayment period maximums, unless forbearance has been approved under § 682.512(c).

(e) *Borrower failure to enroll on at least a half-time basis.* If a lender disburses a FISLP loan and later learns that the borrower has not been or will not be a student enrolled on at least a half-time basis at a participating school during the period for which the loan was intended, the lender shall—

(1) Cease billing the Secretary for interest payments on the borrower's behalf, since no further interest benefits on that loan are payable;

(2) Notify the borrower that full payment of the loan is immediately due. If necessary, the lender may allow the borrower to repay the loan in installments; and

(3) Attempt to collect from the borrower the amount of any interest already paid on the borrower's behalf by the Secretary and offset any amount collected on the lender's next billing for Federal interest benefits.

(f) *Repayment schedule agreement.* When a lender learns that a borrower is no longer enrolled at a participating school on at least a half-time basis, the lender must promptly contact the borrower to establish the precise terms of repayment. The repayment schedule may provide for substantially equal installment payments or for installment payments that increase in amount over the repayment period. If a graduated repayment schedule is established, it may not provide for any single installment that is more than 3 times greater than any other installment.

(g) *Supplemental repayment agreement.* (1) For a loan made by a school lender, the lender and the borrower may enter into an agreement supplementing the regular repayment schedule agreement under paragraph (f) of this section. Under a supplemental repayment agreement, the lender agrees that the borrower is deemed to meet the terms of the regular repayment schedule as long as the borrower makes payments in accordance with a separate schedule. However, the regular schedule must provide for equal installments.

(2) The purpose of a supplemental repayment agreement is to extend the 10- and 15-year repayment period maximums and to permit a lender to offer a borrower a repayment schedule based on other than equal or graduated payments. For example, a supplemental repayment agreement may base the amount of the borrower's payment on the borrower's income.

(3) The agreement and separate schedule must contain terms that the Secretary believes do not unduly burden the borrower and do not subject the Secretary to undue liability. A lender and borrower may not enter into a supplemental repayment agreement unless the lender has obtained the Secretary's prior approval of its terms.

(4) The borrower may not insist upon the establishment of a supplemental repayment agreement. The lender may not insist upon the establishment of a supplemental repayment agreement unless the borrower's written consent to enter into an agreement

of this type was obtained by the lender at the time the loan was made.

(5) A lender may assign a loan subject to a supplemental repayment agreement only if the buyer agrees to accept the loan subject to the terms of the supplemental agreement.

(6) For purposes of the special allowance, interest benefits during a deferment period, and the determination of the amount of loss on an insurance claim, the unpaid principal balance of the loan is based on the regular repayment agreement.

(20 U.S.C. 1077, 1078, 1079, 1082)

§ 682.508 Deferment.

(a) *Borrower eligibility.* (1) Once the repayment period has commenced, a borrower is entitled to have periodic installment payments of principal deferred during authorized periods and during the six months (post-deferment grace period) after the completion of each such period or combination of periods. Except as provided in paragraph (e)(4) of this section, a period of authorized deferment begins when the condition entitling a borrower to deferment first exists. Interest accrues and is payable by the borrower during the deferment and post-deferment grace periods unless the borrower was determined to be eligible for Federal interest benefits when the loan was made. The borrower shall provide to the lender all documentation required to establish eligibility for a specific type of deferment.

(2) A deferment cannot be denied by a lender when the borrower meets the eligibility criteria, even though the borrower may be delinquent, but not in default, in making required installment payments. The 120- or 180-day period required to establish a default does not run during the deferment and post-deferment grace periods. When the post-deferment grace period expires, a borrower resumes any delinquent status that existed when the deferment period began.

(3) A borrower whose loan is in default is not eligible for a deferment unless the borrower has made satisfactory arrangements with the lender to bring the account current.

(b) *Authorized deferments.* Deferment is authorized during periods when a borrower is engaged in at least one of the following activities:

(1)(i) Full-time study at a participating school, unless the borrower is not a national of the United States and is pursuing a course of study at a school not located in a State; or

(ii) Full-time study at a school which meets the definition of an institution of higher education or a vocational school and is operated by an agency of the Federal government (e.g., the service academies), unless the borrower is not a national of the United States and is pursuing a course of study at a school not located in a State.

(2) Study under an eligible graduate fellowship program, as described in paragraph (c) of this section.

(3) Up to 3 years of active duty service in the United States Armed Forces or of service as an officer in the Commissioned Corps of the United States Public Health Service.

(4) Up to 3 years of volunteer service under the Peace Corps Act.

(5) Up to 3 years of service as a full-time volunteer under Title I of the Domestic Volunteer Service Act of 1973 (ACTION programs).

(6) Up to 3 years of full-time volunteer service which the Secretary has determined is comparable to service referred to in paragraphs (b)(4) and (b)(5) of this section for a tax-exempt organization, as described in paragraph (d) of this section.

(7) Conscientiously seeking but unable to find full-time employment in the United States over a single period of up to twelve months, as described in paragraph (e) of this section.

(8) Pursuing a course of study under a rehabilitation training program for disabled individuals, as described in paragraph (f) of this section.

(9) Up to 2 years of service as an intern, as described in paragraph (g) of this section.

(10) Up to 3 years during which the borrower is temporarily totally disabled, as described in paragraph (h) of this section, or during which the borrower is unable to secure employment because he or she is caring for a spouse who is temporarily totally disabled, as described in paragraph (i) of this section.

(c) *Graduate fellowship deferment.* To qualify for a deferment for study under a graduate fellowship program, a borrower shall provide the lender with a statement from an official of the borrower's fellowship program certifying that—

(1) The fellowship program—

(i) Provides sufficient financial support to graduate fellows to allow for full-time study for at least six months;

(ii) Requires, prior to the award of that financial support, a written statement from each applicant which explains the applicant's objectives; and

(iii) Requires a graduate fellow to submit periodic reports, projects, or other evidence of the graduate fellow's progress; and

(2) The borrower—

(i) Holds at least a baccalaureate degree conferred by an institution of higher education;

(ii) Is engaged in full-time study, that may be independent of an educational or cultural institution, in an academic or professional subject area for which the borrower has shown an interest and ability; and

(iii) Has been recommended by an institution of higher education for acceptance into the graduate fellowship program.

(d) *Full-time volunteer service for a tax-exempt organization deferment.* To qualify for a deferment for full-time volunteer service for a tax-exempt organization comparable to volunteer service in the Peace Corps or full-time volunteer service in a program administered by the ACTION agency, a borrower shall provide the lender with a statement from an official of the borrower's volunteer program certifying that—

(1) The borrower serves in an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1954;

(2) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions;

(3) The borrower's compensation does not exceed the compensation received by a full-time volunteer in the Peace Corps or in a program administered by the ACTION agency. Compensation includes a subsistence allowance, necessary travel expenses and stipends;

(4) The borrower, as part of his or her duties, does not give religious instruction, conduct worship services, engage in religious proselytizing, or engage in fundraising to support religious activities; and

(5) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(e)(1) *Basic eligibility for an unemployment deferment.* (i) For purposes of this section, full-time employment involves at least 30 hours of work per week and is expected to last at least 3 months.

(ii) A borrower is entitled to the deferment whether or not he or she has been previously employed. If previously employed, the borrower is entitled to a deferment regardless of the circumstances under which the employment ended.

(iii) An unemployment deferment is not justified if the borrower has sought employment only in kinds of positions or at salary and responsibility levels for which he or she feels qualified by virtue of education or previous experience.

(2) *Submission of request.* To receive an unemployment deferment, a borrower shall submit a request for the deferment in writing to the holder of the loan. To continue the deferment for more than 6 months, the borrower shall submit a second request by the end of that 6-month period. Each request must be signed and dated and contain the following:

(i) A statement from the borrower describing his or her conscientious search of full-time employment.

(ii) The borrower's latest permanent home address and, if applicable the borrower's latest temporary address.

(iii) Certification that the borrower has registered with a public or private employment agency, if one is accessible, specifying its name and address.

(iv) The borrower's agreement to notify the lender promptly when he or she becomes employed full-time.

(3) *Lender's approval or disapproval of request.* (i) The lender must review the borrower's request and notify the

borrower of its decision within one month after receipt of the request.

(ii) The lender may rely upon the written statements provided by the borrower, unless the lender has information to the contrary.

(iii) If the lender is satisfied that the borrower has conscientiously searched for full-time employment and otherwise meets the requirements for an unemployment deferment, the lender shall approve the request.

(iv) If the borrower's request does not justify an unemployment deferment, the lender may grant the borrower forbearance if authorized under § 682.512.

(4) *When the unemployment deferment begins:* An unemployment deferment begins—

(i) On the date that the lender approves the request; or

(ii) On a date not in excess of 60 days prior to the lender's approval if the unemployment existed at the earlier date.

(5) *When the unemployment deferment ends:* An unemployment deferment ends on the earliest of—

(i) The date the lender learns that the borrower has become employed full-time;

(ii) One month after the date when a certification of unemployment deferment eligibility is due from the borrower but has not been received; or

(iii) 12 months after the commencement of the deferment period.

(f) *Rehabilitation training program deferment.* (1) To qualify for this deferment—

(i) The borrower must either be receiving or be scheduled to receive services under a program designed to rehabilitate disabled individuals; and

(ii) The borrower's rehabilitation program must meet the Secretary's criteria for approval.

(2) *Criteria for the Secretary's approval of rehabilitation training programs.* The Secretary approves a rehabilitation training program if the organization providing rehabilitation services to the borrower—

(i) Is licensed, approved, certified or otherwise recognized as providing rehabilitation training to disabled individuals by any of the following agencies—

(A) A State vocational rehabilitation agency;

(B) A State agency for drug abuse treatment;

(C) A State agency for mental health services;

(D) A State agency for alcohol abuse treatment; or

(E) The Veterans Administration; and

(ii) Provides or has agreed to provide that borrower with services for his or her rehabilitation under a rehabilitation plan that is—

(A) Written;

(B) Individualized to meet the borrower's needs;

(C) Specific as to the date on which the services to the borrower are expected to end; and

(D) Structured in a way that requires a substantial commitment by the borrower to his or her rehabilitation, The Secretary considers a substantial commitment by the borrower to be a commitment of time or effort that would normally prevent an individual from engaging in full-time employment either because of the number of hours that he or she must devote to rehabilitation or because of the nature of his or her rehabilitation. For the purpose of this paragraph, full-time employment involves at least 30 hours of work per week.

(3) *Qualification for a rehabilitation training program deferment.* (i) To obtain a rehabilitation training deferment, a borrower shall provide the lender with evidence that he or she qualifies for the defement, in a form approved by the Secretary. The evidence must include—

(A) The statement of the provider of the rehabilitation services certifying that the borrower either is receiving or is scheduled to receive rehabilitation training services from the provider; and

(B) A statement from an agency described in paragraph (e)(2)(i) of this section certifying that the provider from which the borrower is receiving services or is scheduled to receive services meets the requirements of paragraph (e)(2) of this section with respect to that borrower.

(ii) On receipt of the properly completed request, the lender shall grant the borrower a deferment.

(4) *When the rehabilitation training program deferment begins.* The rehabilitation training deferment begins—

(i) In the case of a borrower who is actually receiving rehabilitation services under an approved program on the date specified in the borrower's rehabilitation plan as the beginning date for his or her receipt of services through that program, but no earlier than November 1, 1978; or

(ii) In the case of a borrower who is requesting deferment based on being scheduled to receive rehabilitation services under an approved program, on the date that the borrower provides the lender with a properly completed request.

(5) *When the rehabilitation training program deferment ends.* Unless the borrower re-establishes his or her eligibility to continue a deferment by repeating the request procedure described in paragraph (3), the rehabilitation program deferment ends on the earliest of the following dates:

(i) In the case of a borrower who was granted deferment based on being scheduled to receive rehabilitation services under an approved program, the date the borrower informs the lender that he or she no longer plans to receive rehabilitation services; or

(ii) In the case of a borrower who was granted deferment based on being scheduled to receive rehabilitation services under an approved program, the date three months from the date the borrower submitted a request for a rehabilitation deferment; or

(iii) The date the borrower ceases rehabilitation training; or

(iv) The date specified in the borrower's rehabilitation plan as the date on which rehabilitation services to the borrower are anticipated to end; or

(v) The date twelve months from the date the borrower begins receiving services.

(g) *Internship deferment.* To qualify for an internship deferment, a borrower shall provide the lender with evidence that he or she is serving in an eligible internship, after obtaining a baccalaureate or professional degree, which the Secretary has determined is required to receive professional recognition required to begin professional practice or service. The Secretary has determined that medical residency is an example of such an internship.

(h) *Borrower's temporary total disability deferment.* (1) To qualify for this deferment the borrower shall give the lender an affidavit of a qualified physician stating that the borrower is temporarily totally disabled.

(2) For purposes of this section, a borrower who is "temporarily totally disabled" is one who, by reason of injury or illness, cannot be expected to be able to attend school or to be gainfully employed during an extended period of time needed to recover from such an injury or illness.

(i) *Deferment for a borrower whose spouse is temporarily totally disabled.* In order to qualify for this deferment the borrower shall give the lender—

(1) An affidavit of a qualified physician stating that the borrower's spouse is temporarily totally disabled. For purposes of this section a spouse who is "temporarily totally disabled" is one who, by reason of injury or illness, cannot be expected to be gainfully employed during an extended period of time needed to recover from such injury or illness and who during that period requires continuous nursing or other similar services; and

(2) A statement from the borrower certifying that he or she is unable to secure employment because he or she is providing this care.

(20 U.S.C. 1077, 1078, 1078-2, 1082, 1085; 42 U.S.C. 5055(e))

[46 FR 3868, Jan. 16, 1981]

§ 682.509 Due diligence in making and disbursing a loan.

(a) *General.* (1) The loan-making process includes the processing of necessary forms, the approval of a borrower for a loan, the determination of the loan amount, the explanation to a borrower of the borrower's responsibilities under the loan, the completion by the borrower of the promissory note, and the disbursement of the loan proceeds.

(2) Except as may be authorized by the Secretary, a lender may not delegate its loan-making functions except

to a school with whom the lender has an origination relationship. If an origination relationship exists, the lender may rely in good faith upon statements of the borrower contained in the loan application, but may not rely upon statements made by the school in the application. A non-school lender which does not have an origination relationship with a school may rely in good faith upon statements of both the borrower and the school which are contained in the application. A school lender may rely in good faith upon statements made by the borrower in the loan application.

(b) *Processing of forms.* Before making a loan, a lender must, subject to paragraph (a)(2) of this section, determine that all required forms have been accurately completed by the borrower, the school, and the lender. A lender must not ask the borrower to sign any form before all information requested of the borrower on that form has been supplied.

(c) *Approval of borrower and determination of loan amount.* (1) A lender may make a loan only to an eligible student. To the extent authorized in paragraph (a)(2) of this section, the lender may make this determination based on the information provided by the school and the borrower on the application form.

(2) In determining the amount of the loan to be made, within the limitations of § 682.505, the lender should review the data on cost of attendance, and on other amounts of financial aid that have been awarded to the student for the intended loan period, which is provided on the application form. In no case may the loan amount exceed the student's estimated cost of attendance for the academic period for which the loan is intended less estimated financial assistance.

(d) *Borrower interview.* (1) Before making an initial loan to a student, a lender should meet personally with the student in order to ensure that the student understands his or her rights and responsibilities under the loan.

(2) In particular, the lender should explain to the student that the loan must be repaid and that the loan funds may only be applied toward educational expenses.

(e) *Promissory note.* (1) The lender shall obtain from the borrower an executed promissory note for each loan as proof of the borrower's indebtedness.

(2) The Secretary periodically makes an approved promissory note form available to FISLP lenders. Except as specified in paragraph (e)(3) of this section, a lender, without the Secretary's prior approval, may not add any clauses to, or modify any of the provisions of, the most current promissory note provided by the Secretary.

(3) At the lender's option the following provision may be included in the promissory note: "The maker agrees to execute a repayment schedule not later than 120 days prior to the beginning of the repayment period."

(4) The lender must give the borrower a copy of each executed note.

(f) *Security and endorsement.* (1) A FISLP loan must be made without security.

(2) With one exception, a FISLP loan must be made without endorsement. If a borrower is a minor and cannot under applicable local law create a legally binding obligation by his or her own signature, a lender may require an endorsement by another person on the borrower's FISLP note. For purposes of this paragraph, "endorsement" means a signature of any party—other than the borrower—who is to assume either primary or secondary liability on the note.

(g) *Loan disbursement.* (1) A lender may not disburse a loan prior to the issuance of the insurance commitment by the Secretary. The lender shall disburse loan funds by means of a check payable to the borrower or, if authorized by the borrower in writing, jointly to the borrower and the school that he or she is to attend. The check must require the personal endorsement of the borrower. Deposit of the check in the borrower's account at a bank or other financial institution constitutes endorsement for purposes of this paragraph.

(i) Unless the borrower attends a school not in a State or if the lender is also a school, a lender shall mail the check to the school, to the attention of the school official named on the loan application for delivery to the borrower. The lender may not mail the check to the school earlier than is reasonably necessary to meet the cost of attendance for the period for which the loan is made and in no case, without the Secretary's approval, earlier than 30 days prior to the date on which the student is scheduled to enroll.

(ii) If a borrower is attending a school located outside a State (a foreign school), the lender must send the check to the borrower directly. Within 30 days of the disbursement, the lender must notify the school of the amount of the loan insured.

(iii) A school lender may not disburse a loan to a student earlier than is reasonably necessary to meet the cost of attendance for the period for which the loan is made. If a student fails to enroll at that school during the academic period for which the loan was made, the Secretary pays subsequent insurance, interest benefits, and special allowance claims only on amounts disbursed to the student that are reasonably necessary for travel from the student's residence to the school.

(2) Neither a lender nor a school may obtain a borrower's power of attorney or other authorization to endorse a disbursement check on behalf of a borrower. The borrower shall personally endorse the check and may not authorize anyone else to endorse it on his or her behalf.

(3) For purposes of the FISLP, a check is a draft drawn on a bank and payable on demand.

(4) *Late disbursements.* (i) Under certain circumstances a lender, with the prior approval of the Secretary, may disburse a FISLP loan after a borrower has ceased to be enrolled on at least a half-time basis or after the expiration date of the insurance commitment.

(ii) Approval of late disbursements may be granted only when the Secretary is satisfied that the loan proceeds will be used for the educational expenses of the period of enrollment for which the loan was made.

(iii) If the lender, after receiving the Secretary's prior approval, makes a late disbursement, the lender shall give notice of that approval to the school at the time it sends the loan check to the school.

(20 U.S.C. 1077, 1080, 1082, 1083, 1085)

[44 FR 53868, Sept. 17, 1979, as amended at 45 FR 42581, June 24, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 682.510 Due diligence in servicing a loan.

(a) *Borrower inquiries.* A lender shall respond on a timely basis to written inquiries and other communications from a borrower and any endorser of a loan.

(b) *Conversion of a loan to repayment status.* (1) (i) When a lender learns that a borrower is no longer enrolled at a participating school on at least a half-time basis, the lender shall promptly contact the borrower in order to establish the terms of repayment.

(ii) If the lender has exercised the option of including the provision authorized by § 682.509(e)(3) in the promissory note, it must provide a repayment schedule to the borrower not later than 150 days prior to the beginning of the repayment period.

(2) When establishing repayment terms, the lender should take into consideration the financial obligations and the current and potential income of the borrower. The lender should design a repayment schedule that retires the loan obligation as soon as possible, as permitted under § 682.507, without leading to default caused by the borrower's inability to make payments.

(3) Terms of repayment must be established by using an ED Form 1171 (Promissory Note-Installment), or a similar instrument, that is provided to the borrower and made a part of, and subject to the terms of, the borrower's original promissory note. A disclosure statement consistent with Federal Regulation Z, Truth-in-Lending, is an acceptable repayment schedule. The borrower's signature is not required on the instrument.

(4) The lender shall retain the original promissory note until the loan is paid in full. Within 30 days, the lender shall give the borrower the original promissory note and the repayment instrument.

(20 U.S.C. 1080, 1082, 1085)

§ 682.511 Due diligence in collecting a loan.

(a) *General.* (1) A lender must exercise due diligence in the collection of a FISLP loan with respect to both a borrower and any endorser. In order to exercise due diligence, a lender, except as provided in paragraph (a)(2) of this section, shall implement the following procedures when a borrower fails to honor his or her payment obligation.

(2) Paragraphs (b) through (f) of this section, shall not apply—

(i) After it has been determined, or while a lender is seeking to have a determination made, that a borrower has died, become totally and permanently disabled, or been adjudicated a bankrupt, as set forth in § 682.514; or

(ii) After it has been determined that any of the conditions for filing a default claim without previous collection efforts exist, as set forth in §§ 682.515 and 682.517(e).

(b) *Initial delinquency.* (1) When a borrower is delinquent in making a payment, the lender shall remind the borrower within 15 working days of the date the payment was due by means of a letter, notice, telephone call, or personal contact. If payments do not begin or resume, the lender must attempt to contact both the borrower and any endorser at least 3 more times at regular intervals during the rest of the 4-month period that started on the due date of the delinquent payment. These contacts should become progressively more forceful in tone.

(2) If the lender has exercised the option of including the provision authorized by § 682.509(e)(3) in the promissory note, and the lender has complied with § 682.510(b)(1)(ii), the lender shall follow the procedures in paragraph (b)(1) of this section to attempt to cure a borrower's delinquency in executing the repayment schedule.

(c) *Skip-tracing assistance.* Whenever a lender does not know the borrower's current address, even while the borrower is in school, the lender shall attempt to locate the borrower through normal commercial collection techniques, including contacting any endorser or other individuals named on the borrower's loan application. If these efforts are unsuccessful, the lender shall attempt to learn the borrower's current address through use of the Department's skip-tracing assistance. The Secretary does not pay insurance on a default claim if the lender did not know the borrower's address but failed to request this skip-tracing assistance. If the lender obtains knowledge of the borrower's address prior to filing a default claim, the lender must attempt to contact the borrower.

(d) *Pre-claim assistance.* When a borrower is 60 days delinquent in making payment, or executing a repayment schedule in accordance with a provision in the promissory note authorized by § 682.509(e)(3), the lender must request pre-claim assistance from the Department. This pre-claim assistance consists of a series of letters being sent to the borrower, urging the borrower to contact the lender and begin or resume payments. The Secretary does not pay insurance on a default claim if the lender failed to request this pre-claim assistance.

(e) *Final demand letter.* A lender must send a final demand letter to the borrower and any endorser at least 30 days before the lender files a default claim. The lender must allow the borrower or endorser at least 30 days to respond to the final demand letter. However, a lender need not send a final demand letter to a borrower or endorser whose address is unknown.

(f) *Litigation.* (1) If the borrower's loan is in default and the lender determines that the borrower or endorser has the ability to repay the loan, the lender may bring suit against the borrower or the endorser to recover the amount of the unpaid principal and interest together with reasonable attorney's fees. Prior to bringing suit the lender shall—

(i) Obtain the Secretary's approval. A lender may seek the Secretary's approval to bring suit in anticipation that the lender's collection efforts will be unsuccessful. The Secretary will normally approve a lender's request to bring suit if the Secretary is satisfied that the borrower or endorser has the ability to repay the loan and that the collection efforts required by this section have been, or will be, made prior to the lender's bringing suit;

(ii) Notify the borrower or endorser that the Secretary's approval to bring suit has been obtained, and that suit will be brought unless the borrower or endorser cures the default; and

(iii) Indicate to the borrower or endorser that the lender will seek a judgment under which the borrower or endorser will be legally liable for payment of reasonable attorney's fees and court costs in addition to the unpaid principal and interest. The lender shall mail the notice to the borrower or endorser by certified mail, return receipt requested.

(2) The lender may bring suit if the borrower or endorser does not meet the terms of the lender's demand for payment within 10 days following the date of delivery of the notice to the borrower or endorser indicated on the receipt.

(3) A lender may first apply the proceeds of any judgment against its reasonable attorney's fees and court costs, whether or not the judgment provides for these fees and costs.

(20 U.S.C. 1080, 1082, 1085)

§ 682.512 Forbearance.

(a) The Secretary encourages a lender under the FISLP to grant forbearance for the benefit of a borrower in order to prevent a borrower from defaulting on his or her payment obligations. "Forbearance" means permitting the temporary cessation of payments, allowing an extension of time for making payments, or accepting smaller payments than were previously scheduled. A lender may grant forbearance under paragraph (b) or (c) of this section whenever poor health or other personal problems affect the borrower's ability to make scheduled payments. If payments of interest are forborne they may be added to the principal amount of the loan obligation on the date that repayment begins or resumes or at the end of the period of forbearance.

(b) A lender may grant forbearance on terms that are consistent with the minimum annual payment requirement and the 10 and 15-year limitations on length of repayment if the lender and the borrower agree in writing to the new terms.

(c) A lender may also grant forbearance for a period of up to one year at a time on terms that are inconsistent with the minimum annual repayment requirement and the 10 and 15-year limitations on length of repayment if the lender complies with these requirements:

(1) The lender must reasonably believe that the borrower intends to repay the loan but is currently unable to make payments in accordance with the terms of the loan note. The lender shall state the basis for its belief in writing and maintain that statement in its loan file on that borrower.

(2) Both the borrower and an authorized official of the lender shall sign a written agreement of forbearance.

(3) If the agreement between the borrower and lender provides for postponement of all payments, the lender shall contact the borrower at least every 3 months during the period of forbearance in order to remind the borrower of the outstanding obligation to repay.

(20 U.S.C. 1080, 1082)

§ 682.513 Assignment of a FISLP loan.

(a) *General.* A FISLP note may not be assigned except to another eligible lender. In this section "seller" means any kind of assignor, "buyer" means any kind of assignee, and "assignment" means any kind of transfer, including assignment as security.

(b) *Procedure.* (1) A FISLP note assigned from one lender to another must be subject to a blanket endorsement together with other FISLP notes being assigned or must individually bear effective words of assignment. Either the blanket endorsement or the note must be signed and dated by an authorized official of the seller.

(2) The buyer must—

(i) Notify the Secretary of the assignment if the right to receive interest benefits and special allowance payments has been assigned; and

(ii) Ensure that the borrower is notified if the assignment results in the borrower being required to make installment payments, or direct other matters connected with the loan, to a party other than the party whom the borrower dealt with before the assignment. The buyer must include in the notice to the borrower a clear statement of all the borrower's rights and responsibilities which arise from the assignment of the loan, including a statement regarding the consequences of making payments to the seller or any prior holder of the loan, subsequent to receipt of the notice.

(c) (1) *Risks assumed by the buyer.* Upon acquiring a FISLP loan, a new holder assumes responsibility for the consequences of any previous violation of applicable statutes or regulations or the terms of the note. A FISLP note is not a negotiable instrument, and a subsequent holder is not a holder in due course. If the borrower has a valid legal defense that could be asserted against the original holder, the borrower can also assert the defense against the new holder. If the new holder files a default claim on a loan, the Secretary denies the default claim if there was a legal defect affecting the initial validity or insurability of the loan and to the extent of the borrower's legal defenses. Furthermore, when a new holder files a claim on a FISLP loan, it must provide the Secretary with the same documentation that would have been required of the original lender.

(2) *Special additional rules for assignment of loans made or originated by a school.* The buyer shall not be entitled to rely upon the statements provided by a school in the making or origination of a loan by the school. In addition, the Secretary considers any unpaid tuition refund that was due to the borrower under § 682.608 before the assignment from a school that made or originated the loan as having been paid to the subsequent holder on the borrower's behalf.

(d) *The Secretary's approval.* (1) The approval of the Secretary is required prior to the assignment of a note to any eligible lender which has not entered into a FISLP insurance contract with the Secretary. The Secretary approves such an assignment only if the Secretary is satisfied that one of the parties to the assignment will comply with all the requirements applicable to lenders under the GSLP regulations.

(2) Any arrangement where the loan is assigned to an eligible lender that would hold the loan in trust must receive the Secretary's prior approval. A lender that holds a loan as a trustee assumes responsibility for complying with all applicable statutory and regulatory requirements imposed on a holder of a loan.

(e) *Warranty.* (1) Nothing in this section precludes the buyer of a FISLP loan from obtaining a warranty from the seller covering certain future reductions by the Secretary in computing the amount of insurable loss, if any, on a claim filed on the loan.

(2) The warranty may only cover reductions which are attributable to an act or failure to act of the seller or other previous holder.

(3) The warranty may not cover matters that the buyer is responsible for under the GSLP regulations.

(20 U.S.C. 1079, 1080, 1082)

[44 FR 53868, Sept. 17, 1979, as amended at 45 FR 42581, June 24, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 682.514 Death, disability, and bankruptcy.

(a) *Death.* (1) If a borrower dies, the borrower's obligation to make any further payments of principal and interest on a FISLP loan is cancelled.

(2) The lender may not attempt to collect on the loan from the borrower's estate or any endorser.

(3) The lender may make a determination that the borrower has died on the basis of a death certificate or other proof of death which is acceptable under applicable State law. If a death certificate or other acceptable proof of death is not available, the borrower's obligation on the loan is cancelled only upon a determination by the Secretary on the basis of other evidence that the Secretary finds conclusive.

(4) The lender shall return to the sender any payments received from the estate of the borrower or paid on behalf of the borrower after the date of death.

(b) *Disability.* (1) If a borrower is determined to be totally and permanently disabled, the borrower's obligation to make any further payments of principal and interest on a FISLP loan is cancelled. A borrower is not considered totally and permanently disabled on the basis of a condition that existed prior to his or her loan application unless the borrower's conditions has substantially deteriorated since he or she submitted the loan application.

(2) After being notified by the borrower or the borrower's representative that the borrower claims to be totally and permanently disabled, the lender may not attempt to collect on the loan from the borrower or any endorser. The lender shall promptly request that the borrower or his or her representative obtain a certification from a physician who is a doctor of medicine or osteopathy and legally authorized to practice, on a form provided by the Secretary, that the borrower is totally and permanently disabled. If the form is not submitted to the lender within 60 days of the date the lender requested it, the lender may resume collection unless the physician has notified the lender that a longer period of time is required to make the determination.

(3) If the lender receives a certification from a physician, as described in paragraph (b)(2) of this section, that the borrower is totally and permanently disabled, the lender must return to the borrower any payments that it may have received from or on behalf of the borrower after being notified that the borrower claims to be totally and permanently disabled.

(c) *Bankruptcy.* (1) If a borrower has been adjudicated a bankrupt, the Secretary will assume the borrower's liability for unpaid principal and interest.

(2) Once a lender determines that a borrower has been adjudicated a bankrupt, the lender may not attempt to collect on the loan and must file a bankruptcy claim with the Secretary.

(3) The lender may determine that a borrower has been adjudicated a bankrupt upon receipt of notice of the first meeting of creditors from the bankruptcy court.

(4) If the loan obligation is not dicharged in bankruptcy, the Secretary shall treat the claim as a default claim. The lender shall not be required to repurchase the loan.

(20 U.S.C. 1082, 1087)

§ 682.515 Cessation of lender collection activity in certain cases.

(a) Whether or not a FISLP loan has entered the repayment period or the borrower is eligible for deferment, a lender shall cease collection activity on the loan, and file a default claim with the Secretary within 60 days, after the lender determines that any of the following conditions exist:

(1) The school in which the borrower enrolled terminated its teaching activities involving that borrower during the academic period covered by the loan.

(2) The Secretary—

(i) Has instituted an action to limit, suspend, or terminate the eligibility of the school in which the borrower was enrolled for the academic period covered by the loan, or the eligibility of any lender that has held the loan; and

(ii) Has directed that a claim be filed on the loan.

(3) (i) A school or a lender is the subject of a lawsuit or Federal administrative proceeding and the Secretary determines that the proceeding involves allegations that, if proven, would entitle the borrower to refuse to repay all or a portion of the loan, or to obtain a judgment to recover payments made on the loan; and

(ii) The Secretary has directed that a claim be filed on the loan.

(b) (1) If the Secretary finds that a determination made by a lender under this section is correct, the Secretary pays the default claim as otherwise provided for under these regulations.

(2) If the Secretary finds that the lender's determination is not correct, the Secretary refuses payment and the lender shall resume normal collection activity on the loan.

(c) A lender may not, as a result of a default claim filed with the Secretary under this section, make a report to any credit bureau or other third party concerning the borrower's failure to repay his or her loan.

(20 U.S.C. 1080, 1082)

§ 682.516 Procedures for filing claims.

(a) A lender may file an insurance claim for any of the following reasons:

(1) The loan is in default. A loan is not in default until the 120-day or, if applicable, the 180-day period, described in the definition of "default" in § 682.200, has elapsed. The 120- or 180-day period begins as follows:

(i) If the borrower fails to make an installment payment when due, the 120- or 180-day period begins the day after the due date of that installment.

(ii) (A) If the lender has exercised the option (under § 682.509(e)(3)) of including a provision in the promissory note which requires the borrower to execute a repayment schedule not later than 120 days prior to the beginning of the repayment period, and the borrower has not executed a schedule by that date, despite compliance by the lender with § 682.510(b)(1)(ii), the 120-day period begins 120 days prior to the beginning of the repayment period.

(B) If the lender has exercised the option under § 682.509(e)(3) but sends the borrower the repayment schedule later than 150 days prior to the beginning of the repayment period, but prior to the beginning of the repayment period, the 120-day period begins 30 days after the lender actually sends the borrower the repayment schedule.

(iii) If the lender has not exercised the option of including a provision in the promissory note which requires the borrower to execute a repayment schedule not later than 120 days before the beginning of the repayment period, and the borrower cannot be located or, by the beginning of the repayment period, has not executed a schedule sent to him or her by the lender, the 120 or 180-day period begins on the first day of the repayment period.

(iv) If the borrower enters the repayment period without the lender's knowledge, the 120 or 180-day period begins on the day the lender discovers that the borrower has entered the repayment period.

(2) Any of the conditions for filing a default claim without collection efforts exist, as set forth in §§ 682.515 and 682.517(e).

(3) The borrower has died.

(4) The borrower is totally and permanently disabled.

(5) The borrower has been adjudicated a bankrupt.

(b) *Filing a claim application.* A lender shall file an insurance claim on a form provided by the Secretary. The lender shall attach to the claim all documentation that the Secretary may require. Failure to submit the required documentation may result in a claim not being honored. The Secretary may also deny a claim that is not filed on time.

(c) *Documentation required for all FISLP claims.* The Secretary requires the following documentation for all claims:

(1) The original promissory note.

(2) The loan application.

(3) A payment history, as described in § 682.519(a)(1)(ix), if any payments have been made.

(4) A collection history, as described in § 682.519(a)(1)(x), if the loan has entered the repayment period.

(d) *Assignment of note.* The Secretary's payment of a claim is contingent upon receipt of an assignment to the United States of America of all right, title, and interest of the lender in the note underlying the claim. The lender shall agree to reimburse the Secretary for any overpayments of interest or special allowance that the Secretary may have made for the loan.

(e) *Specific procedures applicable to the individual claim categories.* A lender must also comply with the following requirements for filing default, death, disability, and bankruptcy claims:

(1) *Default claims.* (i) Unless a lender has notified the Secretary that it has filed suit against the defaulted borrower, after obtaining the Secretary's approval for the suit, it must file a default claim with the Secretary within 90 days after the loan has been determined to be in default, or the lender has determined that any of the conditions for filing a default claim without collection efforts exist, as set forth in §§ 682.515 and 682.517(e). If the loan is in default under circumstances where the borrower has entered repayment without the lender's knowledge, the 90-day period for filing begins after the 120 or 180-day default

period following the lender's discovery that the borrower has entered the repayment period.

(ii) In addition to the documentation required for all claims, the lender must submit with its default claim the following:

(A) The repayment schedule.

(B) A collection history, as described in § 682.519(a)(1)(x).

(C) A copy of the final demand letter, if required under § 682.511.

(D) The original or a copy of all personal correspondence addressed to or from, or on behalf of, the borrower relevant to the amount owed by the borrower, whether that correspondence involved the original lender, a subsequent holder, or an independent servicing agency.

(E) Evidence of the lender's requests to the Department for pre-claim assistance and, if a request was required under § 682.511(c), skip-tracing assistance.

(F) For a loan made by a school lender, whether or not the claim is filed by the school, a statement indicating whether the borrower enrolled at the school for the academic period for which the loan was intended and, if not, the amount of the loan that was reasonably necessary for the borrower's travel from his or her residence to the school.

(iii) If the lender files a default claim on a loan and subsequently receives a notice of the first meeting of creditors in the borrower's bankruptcy, the lender shall promptly forward that notice to the Department. The lender may not file a proof of claim with the bankruptcy court in this situation.

(2) *Death claims.* A lender shall file a death claim with the Secretary within 60 days after the lender determines that a borrower is dead. In addition to the documentation required for all claims, the lender shall submit with its death claim those documents which formed the basis for its determination of death.

(3) *Disability claims.* A lender shall file a disability claim with the Secretary within 60 days after it receives a certification from a licensed physician that a borrower is totally and permanently disabled. In addition to the documentation required for all claims, the lender shall submit with its disability claim a copy of the certification.

(4) *Bankruptcy claims.* A lender shall file a bankruptcy claim with the Secretary within 60 days after the lender receives a notice of the first meeting of creditors in a borrower's bankruptcy proceeding. In addition to the documentation required for all claims, the lender shall submit with its claim to the Secretary the following:

(i) The repayment schedule, if the loan has entered into the repayment period.

(ii) An assignment to the United States of America of its proof of claim.

(iii) All pertinent documents sent to or received from the bankruptcy court.

(iv) A statement of any facts of which the lender is aware that may form the basis for an objection to the bankrupt's discharge or an exception to the discharge.

(20 U.S.C. 1080, 1082, 1087)

[44 FR 53868, Sept. 17, 1979, as amended at 45 FR 42581, June 24, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 682.517 Determination of amount of loss on claims.

(a) The amount of loss to be paid on a claim depends upon the type of claim involved.

(1) *Default claims.* The amount of loss to be paid on a default claim depends upon the date the Department received the application for insurance commitment on the loan. If the application was received—

(i) Prior to July 1, 1972, or between August 19, 1972, and February 28, 1973, the amount of loss to be paid on the claim shall be equal to the unpaid balance of the original principal loan amount disbursed; or

(ii) Between July 1 and August 18, 1972, or after February 28, 1973, the amount of loss to be paid on the claim shall be equal to the unpaid balance of the principal and interest. The unpaid principal amount of the loan may include capitalized interest.

(2) *Death and total and permanent disability claims.* The amount of loss to be paid on a death or disability claim depends upon the date the loan

was disbursed. If the loan was disbursed—

(i) Prior to December 15, 1968, the amount of loss to be paid on the claim shall be equal to the unpaid balance of the original principal loan amount disbursed, or

(ii) After December 14, 1968, the amount of loss to be paid shall be equal to the unpaid balance of the principal and interest. The unpaid principal amount may include capitalized interest.

(3) *Bankruptcy claims.* The amount of loss to be paid on these claims shall be equal to the unpaid balance of the principal and interest. The unpaid principal amount of the loan may include capitalized interest.

(b) *Payment of insured interest.* (1) When FISLP insurance covers unpaid interest, the payment on an approved claim covers the unpaid interest that accrues during the following periods:

(i) Before the beginning of the repayment period for a loan that does not qualify for Federal interest benefits, whether or not the accrued interest was added to the principal amount of the loan on the date upon which repayment of the first installment of principal fell due.

(ii) During the period before the claim is filed, not to exceed the period permitted under paragraph (e) of § 682.516 for filing the claim.

(iii) During a period not to exceed 30 days following the return of the claim to the lender by the Secretary for additional documentation necessary for the claim to be approved by the Secretary.

(iv) During the period required by the Secretary to approve the claim and to authorize payment.

(2) When FISLP insurance covers unpaid interest, the Secretary also pays the unpaid interest that accrues during other periods which are tied to the type of claim involved:

(i) The payment on a default claim covers unpaid interest that accrues through the date of default.

(ii) The payment on a bankruptcy claim covers unpaid interest that accrues before the receipt by the lender of the notice of the first meeting of creditors from the bankruptcy referee.

(iii) The payment on a death claim covers unpaid interest that accrues before the lender determines that the borrower is dead.

(iv) The payment on a disability claim covers unpaid interest that accrues before the lender receives a certification from a physician that the borrower is totally and permanently disabled.

(c) *Factors affecting the insurability of a loan.* (1) In determining whether to approve an insurance claim for payment, the Secretary considers legal defects affecting the initial validity or insurability of the loan.

(2) The Secretary also deducts from a claim any amount that is not a legally enforceable obligation of the borrower except to the extent that the defense of infancy applies.

(3) The Secretary further considers whether all holders of the loan have complied with the requirements of the FISLP regulations, including those concerned with the making, servicing, and collecting of a loan, the timely filing of a claim, and the submission of documents with a claim.

(4) The Secretary does not pay a death, disability, or bankruptcy claim for a loan after a default claim for that loan has been disapproved by the Secretary.

(d) *Special rules for a loan acquired by assignment.* If a claim is filed by a lender that obtained a loan by assignment, that lender is not entitled to any payment under this section greater than that to which a previous holder would have been entitled. In particular, the Secretary deducts from the claim any amounts that are attributable to payments made by the borrower to a prior holder of the loan before the borrower received proper notice of the assignment of the loan.

(e) *Special rules for loans made by school lenders.* (1) If the loan for which a claim is filed was originally made by a school and the claim is filed by that school, the Secretary deducts from the claim—

(i) An amount equal to any unpaid refund that the school owes the borrower under § 682.608; or

(ii) An amount attributable to any portion of the program of study that the student was unable to complete because the school terminated its teaching activities during the period of time for which the student obtained a FISLP loan. If this situation occurs, the lender shall immediately file a default claim with the Secretary. The Secretary reimburses the lender in an amount which bears the same ratio to the total amount of the claim as the amount of the educational services that the student received before the school terminated its teaching activities bears to the total services which the student would have received, during the period for which the loan was obtained, had the school not terminated its teaching activities.

(2) If the loan for which a claim is filed was originally made by a school but the claim is filed by another lender that obtained the note by assignment, the Secretary deducts from the claim—

(i) An amount equal to any unpaid refund that the school owed the borrower under § 682.608 prior to the assignment of the loan to a subsequent holder;

(ii) An amount attributable to any portion of the program of study that the student was unable to complete because the school terminated its teaching activities during the period of time for which the student obtained a FISLP loan. If this situation occurs, the lender shall immediately file a default claim with the Secretary. The Secretary reimburses the lender in an amount which bears the same ratio to the total amount of the claim as the amount of the educational services that the student received before the school terminated its teaching activities bears to the total services which the student would have received, during the period for which the loan was obtained, had the school not terminated its teaching activities.

(f) *Special rules for a loan originated by a school.* For purposes of this section, a loan which is originated by a school shall be treated in accordance with paragraph (e)(1) of this section as if it were a loan made and still held by a school.

(g) *Circumstances under which defects in claims may be cured or excused.* (1) The Secretary may permit a lender to cure certain defects in a specified manner as a condition for payment of a default claim.

(2) The Secretary may excuse certain defects—

(i) If the holder submitting the default claim satisfies the Secretary that the defect did not contribute to the default or prejudice the Secretary's attempt to collect on the loan from the borrower; or

(ii) If the defect arose while the holder submitting the default claim was holding the loan but the Secretary had previously found that the holder had procedures in effect sufficient to ensure that such a defect would not normally arise.

(3) The Secretary may also excuse certain defects if the Secretary is satisfied that—

(i) The defect arose while the loan was held by another lender;

(ii) The assignment of the loan was an arm's length transaction;

(iii) The present holder did not know of the defect at the time of the assignment; and

(iv) (A) The present holder could not have become aware of the defect through an examination of the loan documents; or

(B) The present holder had relied on a finding by the Secretary that the lender holding the loan when the defect arose had procedures in effect sufficient to ensure that such a defect would not normally arise.

(20 U.S.C. 1080, 1082)

§ 682.518 The Secretary's collection efforts after payment of a default claim.

After paying a default claim on a FISLP loan, the Secretary attempts to collect from the borrower and any valid endorser in accordance with the Federal Claims Collection Standards (4 CFR Parts 101-105). The Secretary attempts collection of all unpaid principal and accrued interest, except in the following situations:

(a) *The borrower has a valid defense on the loan.* In this situation, the Secretary refrains from collection against the borrower or endorser to the extent of any defense that either may have.

(b) *A school owes the borrower a refund for the period covered by the loan.* In this situation, the Secretary refrains from collection to the extent of the unpaid refund calculated under § 682.608 if the borrower assigns to the Secretary the right to receive the refund and the borrower agrees in writing to pay the Secretary the remaining portion of his or her indebtedness on the loan.

(c) *The school attended by the borrower closed during the academic period covered by the loan.* (1) In this situation, the Secretary refrains from collection against the borrower or endorser to the extent that the borrower would have had a defense on the loan if the loan was—

(i) Made by the school;

(ii) Part of the same transaction as the student's enrollment at the school; and

(iii) Paid to the school in consideration for the educational services that were to be provided by the school.

(2) As a condition of this forgiveness the borrower must—

(i) Assign to the Secretary the right to receive any refund that the school owes the borrower under § 682.608; and

(ii) Agree in writing to pay the Secretary the remaining portion of his or her indebtedness on the loan.

(d) *A school or lender is the subject of a lawsuit or Federal administrative proceeding.* In this situation, if the Secretary determines that the proceeding involves allegations that, if proven, would provide the borrower with a full or partial defense on the loan, then the Secretary may suspend collection activity on all or part of a loan until the proceeding ends. The Secretary suspends collection activity only for so long as the Secretary believes that the proceeding is being energetically prosecuted in good faith and that the allegations that relate to the borrower's defense are reasonably likely to be proven. When a final resolution is reached, the Secretary collects from the borrower to the extent appropriate.

(e) *A school or lender is the subject of a limitation, suspension, or termination action by the Secretary.* In this situation, if the Secretary determines that the final outcome of the action could provide the borrower with a full or partial defense on the loan, then the Secretary may suspend collection activity pending the final resolution of the action. When a final resolution is reached, the Secretary collects from the borrower to the extent appropriate.

(f) *The borrower dies, becomes totally and permanently disabled, or has the FISLP loan discharged in bankruptcy.* In this situation, the Secretary terminates all collection activity against the borrower. If the borrower dies or becomes totally and permanently disabled the Secretary also terminates all collection activity against any valid endorser. However, if the borrower's obligation is discharged in bankruptcy the Secretary continues to attempt to collect the loan from any valid endorser.

(20 U.S.C. 1080, 1082)

§ 682.519 Records, reports, and inspection requirements for FISLP lenders.

(a) *Records.* (1) A lender shall keep complete and accurate records of each FISLP loan which it holds. The records must be organized in a way that permits ready identification of the current status of each loan. The required records include—

(i) The loan application;

(ii) The original promissory note, including the repayment instrument, until it is paid, after which a copy is required;

(iii) The repayment schedule;

(iv) A record of each disbursement of loan proceeds;

(v) Notices of changes in a borrower's address and status as at least a half-time student;

(vi) Evidence of the borrower's eligibility for a deferment;

(vii) The documents required for the exercise of forbearance;

(viii) Documentation of the assignment of the loan;

(ix) A payment history showing the date and amount of each payment received from or on behalf of the borrower, and the amounts attributable to principal and interest;

(x) A collection history showing the date and subject of each communication with the borrower or endorser for collection of a delinquent loan; and

(xi) Any additional records as specifically required by these regulations which are necessary to document the validity of an insurance claim or to make any reports required by the Secretary under these regulations.

(2) (i) A lender shall retain the records required for each loan for not less than 5 years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. However, in particular cases the Secretary may require the retention of records beyond this minimum period.

(ii) The lender may store records in microfilm or computer format. However, the holder of a promissory note must retain the original note and repayment instrument until the loan is fully repaid. At that time the lender shall return the original note and repayment instrument to the borrower, and retain copies for the prescribed period.

(b) *Reports.* A lender shall submit reports to the Secretary at the time and in the manner the Secretary may reasonably require, including but not limited to the following:

(1) The Lender's Manifest for FISLP loans.

(2) The Lender's Request for Payment of Interest on Student Loans.

(3) The Lender's Annual Report on Guaranteed Student Loans Outstanding.

(c) *Inspections.* Upon request, a lender shall afford the Secretary, the Comptroller General of the United States, and any of their authorized representatives access to its records in order to assure the correctness of its reports.

(20 U.S.C. 1077, 1078, 1079, 1080, and 1082)

Subpart F—Requirements, Standards, and Payments for Participating Schools

§ 682.600 Participation agreement between an eligible school and the Secretary.

(a) *General.* Participation of a school in the GSLP means that the school's students are eligible to receive GSLP loans. To participate in the GSLP, under either the FISLP or a guarantee agency program, a school must—

(1) Establish its basic eligibility as an institution of higher education or vocational school, as defined in § 682.200, through certification by the Division of Certification and Program Review, Office of Postsecondary Education, Department of Education; and

(2) Enter into a written agreement with the Secretary. The agreement must be signed by an appropriate official of the school on a form provided by the Secretary.

(b) *Terms of the agreement.* In the agreement, the school promises to comply with the applicable provisions of—

(1) The Act and the GSLP regulations;

(2) 34 CFR Part 668 (General Provisions Relating to Student Assistance Programs); and

(3) 34 CFR Part 686 (Student Consumer Information Services).

(c) *Time to respond.* The Secretary responds to a school's request for an agreement to participate in the GSLP within 30 days after receiving the request.

(d) *Denial or limitation of participation.* (1) If the Secretary decides not to approve a request for an agreement or approves only limited participation in the GSLP by the school, the reason for the decision is included in the response.

(2) The Secretary provides an opportunity for the school to meet with a designated Department official, if the school wishes to appeal a decision involving either—

(i) Denial of an agreement for participation; or

(ii) Approval of an agreement that limits the school's participation.

(3) The Secretary does not, however, grant an opportunity for appeal or give reasons for denying the participation, or approving only the limited participation, of a school if the school submits its request within 6 months of a previous denial or limited approval.

(e) *Change in ownership or form of control.* A GSLP participation agreement automatically terminates when a school changes its ownership or form of control. The termination is effective at the time the change occurs. A new agreement must be signed and approved by the Secretary for the school to participate under the new ownership or form of control.

(f) *Foreign schools.* A school outside the States shall be required to comply with the provisions of these regulations only to the extent determined by the Secretary.

(20 U.S.C. 1082, 1088f-1)

[44 FR 53868, Sept. 17, 1979. Redesignated at 45 FR 77369, Nov. 21, 1980, and amended at 45 FR 86300, Dec. 30, 1980]

§ 682.601 Agreement between the Secretary and a school that makes or originates loans.

(a) *General.* A school must have an agreement with the Secretary in order to make or originate GSLP loans under either the FISLP or a guarantee agency program. The definition of origination is in § 682.200.

(b) *Terms of the agreement.* An agreement to allow a school to either make or originate loans contains the following terms:

(1) The school will not make or originate loans which would be outstanding to more than 50 percent of its undergraduates in attendance at that school on at least a half-time basis. An exception to this rule, however, is contained in paragraph (d) of this section.

(2) The school will inform any undergraduate student who has not previously obtained a loan that was made or originated by the school and who seeks to obtain such a loan that he or she must first make a good faith effort to obtain a loan from a commerical lender.

(3) (i) The school will not make or originate a loan for an academic period to a student described in paragraph (b)(2) of this section until the student provides the school with evidence of denial of a loan by a commercial lender for the same academic period. Evidence acceptable for this purpose is described in paragraph (c) of this section.

(ii) In determining whether a school has complied in good faith with this requirement, the Secretary may take into consideration any patterns reflected by the letters of denial or students' sworn statements referred to in paragraph (c) of this section that indicate that the school has not given sufficient counseling to students to first seek loans from a commercial lender. An example of an unacceptable pattern would be if all denials of loans to a school's students were made by a small number of lenders.

(4) The school will not make or originate a loan for an academic year in excess of the lesser of $2,500 or half the estimated cost of attendance to a student who—

(i) Is in the first academic year of study as an undergraduate; and

(ii) Was not previously enrolled in an undergraduate program.

(5) Loans that the school makes or originates will be disbursed in multiple installments in accordance with the disbursement requirements in § 682.401(b)(3)(ii) and § 682.505(a)(1)(ii) if—

(i) The loan amount exceeds $1,500 for the academic year;

(ii) The borrower is in the first academic year of study as an undergraduate; and

(iii) The borrower was not previously enrolled in an undergraduate program.

(c) *Establishing a loan denial by a commercial lender.* (1) To ensure under paragraph (b)(2) of this section that a student has sought and been denied a loan from a commercial lender for an academic period, the school shall obtain from the student—

(i) A written statement from a commercial lender indicating that the lender denied the student a loan for that academic period; or

(ii) The student's sworn statement indicating both the refusal of a loan by a commercial lender and that lender's refusal to provide a written statement of the denial.

(2) If the student's sworn statement is used to establish the denial of a loan, that statement must include—

(i) The name of the lender that denied the loan;

(ii) The approximate date on which the loan was denied;

(iii) The name of the official who communicated the denial to the student; and

(iv) The student's signature. The statement must be signed by the student in the presence of a notary or other person who is legally authorized to administer oaths or affirmations and who does not take part in the recruiting of students for enrollment at the school. The notary or other person must sign the statement and, if appropriate, affix his or her seal or stamp.

(3) The refusal of a lender to make a loan to a student for the entire amount requested by the student constitutes a denial of a loan, if the school determines that the student is eligible for a loan of that amount. If the denial is based upon the student's inability to obtain the entire amount requested, the school may either—

(i) Make or originate a loan to that student for the entire amount; or

(ii) Supplement the loan that the commercial lender is willing to make with a second loan to the student.

(d) *Waiver of the 50 percent lending limit.* A school may request a waiver of the 50 percent lending limit under paragraph (b)(1) of this section if adherence to that limit would create a substantial hardship to the school's present or prospective students. The Secretary determines whether to grant the school a waiver after considering the following:

(1) The extent to which the school provides, and expects to continue providing, educational opportunities to economically disadvantaged students, as measured by the percentage of these students enrolled at the school who—

(i) Fall within the "low-income family" category used by the Bureau of the Census;

(ii) Would not be able to enroll, or continue their enrollment, at that school without a GSLP loan made or originated by the school; and

(iii) Would not be able to obtain a comparable education at another school.

(2) The extent to which the school offers academic programs that—

(i) Are unique in the geographical area the school serves; and

(ii) Would not be available to some students if the school adhered to the 50 percent lending limit.

(3) The quality of the school's—

(i) Management of student financial assistance programs; and

(ii) Conformance with sound business practices.

(e) *Schools that previously made or originated loans.* A school that is making or originating loans on the effective date of these regulations shall enter into an agreement with the Secretary in order to continue this activity. The agreement must be submitted within 90 days of that effective date.

(20 U.S.C. 1075, 1078, 1082, 1083)

[44 FR 53868, Sept. 17, 1979, as amended at 45 FR 42581, June 24, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 682.602 Providing information to prospective students.

(a) *General.* (1) A school shall present each of its prospective students with a complete and accurate statement containing information about the school. The statement must be in written form and must be presented to the prospective student prior to the time that he or she becomes obligated to pay the school any tuition or fees.

(2) The statement provided by the school must include information pertaining to—

(i) The school's current academic or training programs in which the student has expressed interest;

(ii) The school's faculty in those programs; and

(iii) The school's facilities relating to those programs.

(b) *Providing employment data.* In addition to the information required by paragraph (a) of this section, a school that offers programs or courses of study designed to prepare students for a particular vocational, trade or career field (e.g., truck driving, teaching or pharmacy) shall provide a prospective student in that field with a written statement regarding the employment of students previously enrolled in those programs or courses.

(1) The employment information must include data regarding the percentage of previously enrolled students who entered positions of employment directly related to their enrollment at the school and data regarding the average starting salaries of those students.

(2) The school may provide the prospective student with the most recent comparable regional or national statistical student employment data in lieu of the information about the school's own students if—

(i) After reasonable effort, the school cannot obtain meaningful data on the employment of its own students; or

(ii) The data the school possesses regarding its own students is more than 3 years old and cannot, after a reasonable effort, be updated.

(3) To the extent that information is available, the school should provide a prospective student with information regarding the long range prospects for employment in the particular vocational, trade or career field that the student intends to prepare for at the school.

(20 U.S.C. 1082, 1085, 1088f-1)

§ 682.603 [Reserved]

§ 682.604 Correspondence school schedule requirements.

(a) *General.* A school offering a course of study by correspondence shall establish a schedule for submission of lessons by its students. This schedule must be given to a prospective student prior to that person's enrollment.

(b) *Information in the schedule.* The school shall include the following information in its schedule:

(1) The number of lessons in the course.

(2) The intervals at which lessons are to be submitted.

(3) The date by which the course is to be completed.

(4) The period of time within which any resident training must be completed.

(c) *Additional requirements.* The schedule must conform to the requirements set forth in paragraph (a)(3)(ii) of the definition of "vocational school" in § 682.200.

(20 U.S.C. 1082)

§ 682.605 Certifications by a participating school in connection with a student loan application.

A school shall accurately and completely fill out its portion of a student's loan application. The information requested of the school pertains to the following:

(a) The student's eligibility for a loan determined in accordance with § 682.201.

(b) The student's estimated cost of attendance for the period for which the loan is sought.

(c) The student's estimated financial assistance for the period for which the loan is sought.

(20 U.S.C. 1077, 1078, 1085, 1088f)

§ 682.606 Administrative cost allowance to participating schools.

(a) *General.* The Secretary pays an administrative cost allowance to a participating school when funds for this purpose are appropriated by Congress. The administrative cost allowance payment is based on the number of students enrolled at the school who receive a GSLP loan during the award period.

(b) *How the amount of payment is determined.* (1) If funds are sufficient, each school is paid not more than $10 for each student who receives a GSLP loan for a period of enrollment beginning in an award period.

(2) If appropriated funds for any fiscal year are insufficient to pay the full $10, payments are proportionately reduced.

(3) If additional funds become available for any fiscal year in which payments were reduced, the allowances are proportionately increased.

(c) *Student count.* For purposes of determining the number of GSLP borrowers enrolled at a school, no student can be counted more than once in the same award period.

(d) *Award period.* For the purpose of this section, "award period" means a 12-month period beginning on July 1 of each calendar year.

(e) *Use of the administrative cost allowance funds.* A school that receives an administrative cost allowance payment shall use those funds first to provide consumer information in accordance with 34 CFR Part 686, Student Consumer Information Services, and then to pay for additional costs of administering student financial aid programs under Title IV of the Higher Education Act of 1965.

(f) *Applying for the administrative cost allowance.* To receive the administrative cost allowance payment, a school must submit an application on a form and within the time limit prescribed by the Secretary. The school submits the application only in a fiscal year when funds to make the payment have been appropriated by Congress.

(20 U.S.C. 1078, 1082)

§ 682.607 The student's loan check.

(a) *Purpose.* This section establishes rules for how a school must process a student's GSLP loan check. The school must also comply with any rules for processing a loan check contained in 34 CFR Part 668 (General Provisions for Student Assistance Programs). The rules in this section do not apply to a loan issued by a school lender if the student is attending the school that made the loan.

(b) *General.* (1) Except in the case of a loan check for a student attending a school outside a State (a foreign school), a check issued by a FISLP lender is sent directly to the school where the student is enrolled or will be enrolling.

(2) A loan check issued by a lender under a guarantee agency program may also be sent directly to the school where the student is enrolled or will be enrolling.

(3) A loan check that is sent directly to the school is payable either jointly to the school and the student or only to the student.

(4) Generally, the school may only release a check to a student who has maintained eligibility for the loan by enrolling or continuing enrollment on at least a half-time basis. Exceptions to this rule are contained in paragraphs (f) and (g) of this section.

(c) *A check made payable to the student.* When a school receives a loan check that is payable to one of its students, the school shall process the check as follows:

(1) If the school receives the check after the student enrolls for the academic period for which the loan is intended, the school must promptly deliver the check to the student.

(2) If the school receives the check before the student enrolls for the academic period for which the loan is intended, the school must hold the check and deliver it to the student at the time of the student's enrollment. If after receiving a check for a student, the school determines that the student has not enrolled as expected, the school must return the check to the lender within 30 days of this determination.

(d) *A jointly payable check.* When a school receives a loan check that is made jointly payable to the school and the student, the school shall process the check as follows:

(1) If the school receives the check after the student enrolls for the academic period for which the loan is intended, the school must either—

(i) Endorse the check on its own behalf and deliver it to the student; or

(ii) Obtain the student's endorsement, and—

(A) Retain that portion of the loan proceeds that the student currently owes the school for educational costs as described in paragraph (e) of this section; and

(B) Promptly give the remaining funds to the student.

(2) If the school receives the check before the student enrolls for the academic period for which the loan is intended, the school must hold the check until the student enrolls and then follow the procedures described in paragraph (d)(1) of this section. If after receiving a check for a student, the school determines that the student has not enrolled as expected, the school must return the check to the lender within 30 days of this determination.

(e) *Retaining student loan proceeds.* A school may only retain loan proceeds covering costs of attendance owed to the school over that part of the academic year for which substantially all of the school's students have been billed, unless the student requests in writing that the school retain additional loan proceeds in order to assist in budgeting his or her funds for the remainder of the academic year.

(f) *Processing a late disbursement check.* (1) For purposes of this paragraph, a loan check is considered a late disbursement check if the school receives the student's loan check from the lender either—

(i) After the expiration of the academic period for which the loan was intended (the expiration date of the insurance commitment); or

(ii) Prior to the expiration of the academic period for which the loan was intended but after the student ceased to be enrolled at the school on at least a half-time basis.

(2) If the late disbursement check is accompanied by a notice from the lender that the late disbursement has been approved by the Secretary or the appropriate guarantee agency, the school shall follow the applicable procedure described in paragraph (c) or (d) of this section.

(3) If the late disbursement check is not accompanied by the notice described in paragraph (f)(2) of this section, the school shall—

(i) Return the check to the lender within 30 days of its determination that one of the conditions described in paragraph (f)(1) of this section exists;

(ii) Send with the check—

(A) A notice that one of the conditions described in paragraph (f)(1) of this section exists; and

(B) If applicable, information concerning the student's date of withdrawal and costs of attendance owed the school for the period the student was enrolled on at least a half-time basis;

(iii) Advise the student that the lender may, in accordance with § 682.509(g)(4) or similar rules established by the guarantee agency, redisburse funds for the student's costs of attendance incurred before the existence of one of the conditions described in paragraph (f)(1) of this section.

(20 U.S.C. 1078, 1082)

[44 FR 53868, Sept. 17, 1979, as amended at 45 FR 42581, June 24, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 682.608 Refund policy.

(a) *General.* (1) A school shall have a fair and equitable refund policy under which it will make a refund of unearned tuition, fees and room and board charges to a student who receives a GSLP loan and—

(i) Does not enroll for the academic period for which the loan was intended; or

(ii) Does not complete the academic period for which a loan was made.

(2) The school shall state its refund policy clearly in writing. The school shall include in its refund policy the procedure a student would follow to obtain a refund.

(3) The school shall provide the written statement containing its refund policy to a prospective student prior to the student's acceptance for initial enrollment. The school shall also make its refund policy known to currently enrolled students. It the school changes its refund policy, the school shall ensure that all students are made aware of the new policy.

(b) *Fair and equitable refund policy.* A school's refund policy is fair and equitable if that policy conforms with—

(1) The requirements of applicable State law; and

(2)(i) Specific refund standards set by the school's nationally recognized accrediting agency and approved by the Secretary;

(ii) If no such standards exist, other specific refund policy standards, either contained in Appendix A to this Part or set by another association of institutions of postsecondary education and approved by the Secretary.

(20 U.S.C. 1082, 1088f-1(a)(2))

[44 FR 53868, Sept. 17, 1979. Redesignated at 45 FR 77369, Nov. 21, 1980, and amended at 46 FR 3872, Jan. 16, 1981]

§ 682.609 Determining the date of a student's withdrawal.

(a) *Purpose.* This section establishes rules for how a school must determine the date (to include day, month and year) on which a student withdraws from the school for the purpose of—

(1) Calculating the amount of a refund due the student; and

(2) Reporting that the student has left the school.

(b) *The withdrawal date.* The school shall establish the date of a student's withdrawal as follows:

(1) Generally, the student's withdrawal date is the earlier of—

(i) The date the student notifies the school of his or her withdrawal; or

(ii) The date the school determines that a student has withdrawn.

Paragraphs (b)(2) and (b)(3) of this section contain additional rules applicable to particular situations.

(2) If the student has not returned to school at the expiration of a leave of absence approved under paragraph (c) of this section, the student's withdrawal date is the date of the first day of the leave of absence.

(3) If the student is enrolled in a program of study by correspondence, the student's withdrawal date is normally 60 days after the due date of a required lesson that the student failed to submit in accordance with the schedule for lessons established by the school under § 682.604. However, if the student establishes in writing, within the 60-day period, a desire to continue in the program and an understanding that the required lessons must be submitted on time, the school may grant that student a restoration to in-school status. However, the school may not grant the student more than one restoration to in-school status on this basis.

(c) *Leaves of absence.* A student who is absent from school and who has been granted a leave of absence by the school, in accordance with this paragraph, is not considered to have withdrawn from school for purposes of this section. A school may grant a leave of absence to a student provided—

(1) The student has made a written request to be granted a leave of absence;

(2) The leave of absence involves no additional charges by the school to the student;

(3) The leave of absence does not—

(i) Exceed 60 days; or

(ii) Exceed six months if either of the following circumstances exists:

(A) The school is not a correspondence school and the school's next period of enrollment after the start of the leave of absence would begin more than 60 days after the first day of the leave of absence; or

(B) The absence is requested because of the student's medically determinable condition. In this case, the student must provide the school with a recommendation from a physician for a leave of absence longer than 60 days; and

(4) The student has not previously been granted a leave of absence by the school. Additional leaves of absence for a student must be approved by the Secretary.

(20 U.S.C. 1082, 1088f-1(a)(2))

§ 682.610 Payment of a refund to a lender.

(a) *General.* (1) By applying for a GSLP loan, a student authorizes the school to pay directly to the lender that portion of his or her refund from the school that is allocable to that loan.

(2) A school shall pay that portion of the student's refund that is allocable to a GSLP loan to—

(i) The original lender; or

(ii) A subsequent holder, if the loan has been transferred and the school knows the new holder's identity.

(3) When the school pays refund monies to a lender on behalf of a student, the school shall provide simultaneous written notice to a student of this action.

(b) *Calculating what portion of the refund to allocate to the loan.* (1) In determining what portion of a student's refund for an academic period is allocable to a GSLP loan received by the student for the same academic period, the school must make provision for the refund requirements of other forms of financial assistance which the student has received.

(2) Except as may be otherwise provided in 34 CFR Part 668 (General Provisions for Student Assistance Programs), the portion of the refund that is determined to be allocable to the GSLP loan must not be less than the amount derived using the following formula:

$$\frac{\text{Portion of refund allowable to GSLP loan}}{\text{Total refund}} = \frac{\text{Amount of GSLP loan}}{\text{Estimated cost of attendance, as defined in § 682.200}}$$

(c) *Timely payment of refund.* A school shall pay each refund that is due in accordance with the following:

(1) Within 40 days after the date of the student's withdrawal from the

school, as determined in accordance with § 682.609(b); or

(2) In the case of a student who does not return to school at the expiration of an approved leave of absence (see § 682.609(c)), within 40 days after the last day of that leave of absence.

(d) *Transition requirements.* In the event of a school's closure, termination, or suspension of operations, or change in ownership, the school or its successors shall make provision for compliance with the requirements of this section with regard to students who obtained loans for periods of attendance at the school prior to the school's change in status.

(20 U.S.C. 1082, 1088f-1(a)(2))

§ 682.611 Termination of a school's lending eligibility.

(a) *General.* The Secretary terminates a school's eligibility to make GSLP loans, under the FISLP or a guarantee agency program, if the school reaches the 15 percent limit on loan defaults described in paragraph (b) of this section.

(b) *The 15 percent limit.* (1) The Secretary terminates a school's eligibility to make GSLP loans if, during each of the two most recent consecutive one-year periods for which data is available, the total amount of loans described in paragraph (b)(1)(i) of this section equals or is greater than 15 percent of the total amount of loans described in paragraph (b)(1)(ii) of this section.

(i) The original principal amount of loans the school has ever made that went into default during that period.

(ii) The original principal amount of all loans the school has ever made, including loans in deferment status, that—

(A) Were in repayment status at the beginning of that period; or

(B) Entered repayment status during that period.

(2) In making the determination required by this section, the Secretary considers the status of all loans made by the school, whether the loans are held by the school or a subsequent holder.

(c) *Exception based on hardship.* The Secretary does not terminate a school's lending eligibility under paragraph (a) of this section if the Secretary determines that the termination would result in a hardship condition for the school or its students. The Secretary makes this determination if the school shows that—

(1) Termination is not justified in light of recent improvements the school has made in its collection capabilities that will cause the school's loan delinquency rate to improve within the next year. Examples of these improvements include the following:

(i) Adopting more efficient collection procedures.

(ii) Employing increased collection staff; or

(2) Termination would cause a substantial hardship to the school's current or prospective students based on—

(i) The extent to which the school provides, and expects to continue to provide, educational opportunities to economically disadvantaged students, as measured by the percentage of students enrolled at the school who—

(A) Fall within the "low-income family" category used by the Bureau of the Census;

(B) Would not be able to enroll, or continue their enrollment, at that school without a GSLP loan from the school; and

(C) Would not be able to obtain a comparable education at another school.

(ii) The extent to which the school offers academic programs that—

(A) Are unique in the geographical area the school serves; and

(B) Would not be available to some students if they could not obtain loans from the school.

(iii) The quality of improvements the school has made in its—

(A) Management of student financial assistance programs; and

(B) Conformance with sound business practices.

(d) *Termination procedures.* The Secretary does not terminate the lending eligibility of a school under this section until the school has been notified of the impending action and has had an opportunity for a hearing.

(1) *The termination notice.* A Department official designated by the

Secretary begins a termination action by sending a notice to the school. The notice is sent by certified mail with a return receipt requested. In the notice, the designated official—

(i) Informs the school of the intent to terminate the school's lending eligibility because of the school's default experience;

(ii) Specifies the proposed effective date of the termination as the next October 1;

(iii) Informs the school that it has 15 days to do the following—

(A) Submit any written material it wants considered in determining whether its lending eligibility should be terminated under paragraph (a) of this section, including written material in support of a hardship exception under paragraph (c) of this section; or

(B) Request a hearing to show why the school should not be terminated.

(2) *If a hearing is not requested.* If the school does not request a hearing but submits written material, the designated official considers that material and notifies the school as to whether the termination action will be taken.

(3) *The hearing.* The designated official schedules the date and place of a hearing for a school that has requested a hearing. The date of the hearing is at least 15 days from the date that the designated official received the request.

(i) A presiding officer (defined in § 682.701) conducts the hearing.

(ii) The presiding officer considers all written material presented before the hearing and any other material presented during the hearing.

(iii) The presiding officer determines if termination of the school's lending eligibility is warranted.

(4) *Review of a termination of a school's lending eligibility.* The decision of the presiding officer, or of the designated official, in the event that the school has submitted written material but has not requested a hearing, is subject to review by the Secretary.

(e) *Reinstatement of lending eligibility.* (1) A school that has its lending eligibility terminated under this section may not make further GSLP loans unless it has entered into a new lending agreement with the Secretary under § 682.601.

(2) A new agreement may not take effect until at least one year after a school's lending eligibility has been terminated under this section.

(f) *Schools under the same ownership.* If a school makes loans to students in attendance at other schools under the same ownership, the Secretary may make the determinations required by this section by—

(1) Treating all the schools as one; or

(2) Treating each school on a school-by-school basis.

(20 U.S.C. 1082, 1085)

[44 FR 53868, Sept. 17, 1979, as amended at 45 FR 42581, June 24, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 682.612 Records, reports, and inspection requirements for participating schools.

(a) *General.* (1) Each school shall establish and maintain proper administrative and fiscal procedures and all necessary records, as set forth in these regulations and 34 CFR Part 668 (the General Provisions for Student Assistance Programs), in order to—

(i) Protect the rights of students;

(ii) Protect the United States from unreasonable risk of loss due to defaults; and

(iii) Comply with any specific requirements in these regulations and 34 CFR Part 668.

(2) Each school shall submit such reports, as prescribed by the Secretary, as are necessary to comply with these regulations and 34 CFR Part 668. This requirement includes the timely completion and submission of the Student Confirmation Report (SCR).

(3) When a school becomes aware of a change in the enrollment status of a student who has received a GSLP loan because that student has graduated, withdrawn or ceased to be enrolled at least half-time, the school should report the change directly to the lender if—

(i) The enrollment change is one that would normally be reported on the next SCR; and

(ii) The school does not expect to submit its next SCR to the Secretary within the next 60 days.

(b) *Loan record requirements.* In addition to records required by 34 CFR

Part 668, for each loan received by its students a school shall maintain a record of—

(1) The name of the student borrower;

(2) The name of the lender;

(3) The amount of the loan;

(4) The period for which the loan is intended;

(5) The data used to construct an individual student budget or the school's itemized standard budget used in calculating the student's estimated cost of attendance;

(6) The amount of tuition and fees paid by the student for that period;

(7) The date the student pays those tuition and fees;

(8) The date the school receives each loan check, if the loan check is disbursed through the school and the school itself is not the lender;

(9) The date the school gives each loan check to the student, unless disbursement is made directly to the student by a lender;

(10) The date the school endorses each loan check, if the school is a copayee;

(11) The date(s) of disposition of the loan proceeds, if the school is a copayee and the student endorses the check before the school does; and

(12) A record of the student's job placement, if the school provides employment placement service and the student has used the service.

(c) *Retention requirement for records and reports.* (1) Unless otherwise directed by the Secretary, the school shall keep all records required under these regulations for 5 years, following the date a student—

(i) Graduates;

(ii) Withdraws; or

(iii) Fails to enroll on at least a half-time basis for an academic period for which a GSLP loan was received.

(2) Unless otherwise directed by the Secretary, the school shall also keep, for 5 years after their completion, copies of reports and other forms utilized by the school related to GSLP loans.

(3) In the event of the closure, termination, suspension or change of ownership of a participating school, that school or its successor must make provision for the retention of the records and reports required by these regulations and for access to these records and reports for purposes of paragraph (d) of this section.

(4) Records and reports may be kept on microfilm or computer format.

(d) *Federal audits.* For purposes of audit and examination, the school shall give the Secretary, the Comptroller General of the United States, or any of their duly authorized representatives access to records required by these regulations and by Part 668 and to any other pertinent books, documents, papers and records.

(e) *Non-Federal audits.* (1) The school shall, in conformance with 34 CFR Part 668, audit or have audited under its direction, all of the school's GSLP transactions to determine a minimum—

(i) The fiscal integrity of financial transactions and reports; and

(ii) Whether the transactions are in compliance with the applicable laws and regulations.

(2) Audits shall be performed in accordance with the Department of Education's "Audit Guide for the Guaranteed Student Loan Program."

(3) The school shall have an audit performed at least once every two years. Each audit must cover the entire period of time that elapsed since the last audit that was performed.

(4) The school shall submit the audit report to the appropriate regional office of the Department of Education's Audit Agency for review.

(20 U.S.C. 1082, 1083)

Subpart G—Limitation, Suspension, or Termination of Lender Eligibility Under the Federal Insured Student Loan Program

§ 682.700 Purpose and scope.

(a) This subpart establishes rules for the limitation, suspension, or termination of the eligibility of an otherwise eligible lender to participate in the FISLP. These rules apply to a lender that violates any provision of the FISLP statute or any regulation, special arrangement, agreement, or limitation prescribed under the FISLP.

(b) This subpart does not apply to a determination that an organization fails to meet the definition of "lender" in § 682.200, nor to a school's loss of lending eligibility due to its default experience under § 682.611.

(c) This subpart also does not apply to administrative action by the Department of Education based on any alleged violation of—

(1) Title VI of the Civil Rights Act of 1964, which is governed by 34 CFR Parts 100 and 101;

(2) Title IX of the Education Amendments of 1972 (relating to sex discrimination), which is governed by 34 CFR Part 106; or

(3) The Family Educational Rights and Privacy Act of 1974 (Sec. 438 of the General Education Provisions Act, as amended) which is governed by 34 CFR Part 99.

(20 U.S.C. 1080, 1082, 1088f-1)

§ 682.701 Definitions of terms used in this subpart.

Designated ED official: An official of the Department to whom the Secretary has delegated the responsibility for initiating and pursuing limitation, suspension, and termination procedures.

Limitation: The continuation of a lender's eligibility, subject to compliance with special conditions set by the Secretary as a result of a limitation or termination proceeding.

Presiding officer: An impartial person who has no prior involvement with the facts giving rise to a limitation, suspension or termination proceeding, and who is selected by the Secretary to conduct a hearing.

Suspension: The removal of a lender's eligibility for a specified period of time or until the lender meets certain requirements.

Termination: The removal of a lender's eligibility for an indefinite period of time.

(20 U.S.C. 1080, 1082, 1088f-1)

§ 682.702 Effect on prior participation.

Limitation, suspension, or termination proceedings do not affect a lender's responsibilities, or rights to benefits and claim payments, that are based on the lender's prior participation in the program, except as provided in § 682.709.

(20 U.S.C. 1080, 1082, 1088f-1)

§ 682.703 Informal compliance procedure.

(a) If the Secretary receives a complaint, or other information that the Secretary believes to be reliable, indicating that a lender may be violating applicable laws, regulations, special arrangements, agreements, or limitations, the Secretary may give the lender a reasonable opportunity to—

(1) Respond to the complaint or other information;

(2) Show that the matter has been corrected; or

(3) Submit an acceptable plan to correct the violation and prevent its recurrence.

(b) Limitation, suspension or termination procedures need not be delayed during the informal compliance procedure under paragraph (a) of this section if the Secretary believes—

(1) The delay would harm the FISLP; or

(2) The informal compliance procedure would not correct the alleged violation.

(20 U.S.C. 1080, 1082, 1088f-1)

§ 682.704 Emergency action.

(a) The Secretary, through a designated ED official, may take emergency action to stop issuing insurance commitments to a lender if the designated ED official—

(1) Receives information, which the official believes to be reliable, that the lender is violating applicable laws, regulations, special arrangements, agreements, or limitations;

(2) Determines that immediate action is necessary to prevent the likelihood of substantial losses by the Federal Government or students; and

(3) Determines that the likelihood of loss outweighs the importance of following the procedures for limitation, suspension, or termination.

(b) The designated ED official begins an emergency action by notifying the lender, by certified mail with return receipt requested, of the action and the reasons for it. The effective date of the action is the date that the notice is mailed.

(c) An emergency action does not exceed 30 days unless a limitation, suspension, or termination proceeding is begun before that period expires. In that event, the emergency action may be extended until the completion of the proceeding, including any appeal that may be made to the Secretary.

(d) If a limitation, suspension, or termination proceeding is begun, the Secretary provides the lender, upon request, an opportunity to demonstrate that the emergency action is unwarranted.

(20 U.S.C. 1080, 1082, 1088f-1)

§ 682.705 Suspension proceedings.

(a) *Scope and consequences.* A suspension removes a lender's eligibility under the FISLP for a period of time. That period does not exceed 60 days from the effective date of the suspension unless—

(1) The lender and the designated ED official agree to an extension, if the lender has not requested a hearing; or

(2) The designated ED official begins a limitation or termination proceeding.

(b) *Procedure.* (1) The designated ED official begins a suspension proceeding by sending a notice to the lender by certified mail with return receipt requested. In the notice, the designated ED official—

(i) Informs the lender of the Secretary's intent to suspend the lender's eligibility, cites the consequences of that action, and identifies the alleged violations on which that action is based;

(ii) Specifies the proposed effective date of the suspension, which is at least 20 days after the date of mailing of the notice of intent;

(iii) Informs the lender that the suspension will not take effect on the date specified in the notice if the designated ED official receives, at least five days before that date, a request for a hearing or written material showing why the suspension should not take place; and

(iv) Asks the lender to voluntarily correct the alleged violation(s).

(2) If the lender does not request a hearing but submits written material the designated ED official considers that material and notifies the lender that—

(i) The proposed suspension is dismissed; or

(ii) The suspension is effective as of a specified date.

(3) If the lender requests a hearing by the time specified in paragraph (b)(1)(iii) of this section the designated ED official sets the date and place. The date is at least 15 days after the designated ED official receives the request. No suspension takes place until a hearing is held.

(4) A presiding officer conducts the hearing and a written record of the hearing is made.

(5) At the hearing, the presiding officer shall consider any written material presented before the hearing and all other evidence presented during the hearing.

(6) If the presiding officer concludes that the suspension is warranted, the presiding officer issues an initial decision suspending the lender's eligibility.

(7) The Secretary reviews the initial decision of the presiding officer and issues a final decision. The Secretary adopts the initial decision unless it is clearly unsupported by the evidence.

(c) Notice of the suspension is promptly mailed to the lender. The suspension takes effect either on the date that the initial decision notice is mailed to the lender or on the original proposed effective date stated in the notice of intent, whichever is later.

(d) If the designated ED official begins a limitation or termination proceeding before the suspension period ends, the suspension period may be extended until the completion of that proceeding, including any appeal to the Secretary.

(20 U.S.C. 1080, 1082, 1088f-1)

§ 682.706 Limitation or termination proceedings.

(a) *Scope and consequences.* A limitation or termination either—

(1) Limits in a specified manner the eligibility of a lender to participate in the FISLP; or

(2) Removes the eligibility of a lender to make any new FISLP loans.

(b) *Procedure.* (1) The designated ED official begins a limitation or termination proceeding, whether or not a suspension proceeding has begun, by sending the lender a notice by certified mail with return receipt requested. In the notice, the designated ED official—

(i) Informs the lender of the Secretary's intent to limit or terminate the lender's eligibility, cites the consequences of that action, identifies the alleged violations on which that action is based, and in the case of a limitation states the limits which may be imposed;

(ii) Specifies the proposed effective date of the limitation or termination, which is a least 20 days after the date of mailing of the notice of intent;

(iii) Informs the lender that the limitation or termination will not take effect on the date specified in the notice if the designated ED official receives, at least 5 days before that date, a request for a hearing or written material showing why the limitation or termination should not take place; and

(iv) Asks the lender to voluntarily correct the alleged violation(s).

(2) If the lender does not request a hearing but submits written material the ED official considers that material and notifies the lender that either—

(i) The proposed action is dismissed;

(ii) Limitations are effective as of a specified date; or

(iii) The termination is effective as of a specified date.

(3) If the lender requests a hearing by the time specified in paragraph (b)(1)(iii) of this section the designated ED official sets the date and place. The date is at least 15 days after the designated ED official receives the request. No proposed limitation or termination takes place until after a hearing is held.

(4) A presiding officer conducts the hearing, and a written record of the hearing is made.

(5) At the hearing the presiding officer shall consider any written material presented before the hearing and all other evidence presented during the hearing.

(6) If the presiding officer concludes that limitation or termination is warranted the presiding officer issues an initial decision that limits or terminates the lender's eligibility.

(7) If a termination action is brought against a lender, and the presiding officer believes a limitation to be more appropriate, the presiding officer may issue a decision imposing one or more limitations on a lender rather than terminating its eligibility.

(c) *Expedited hearings.* With the approval of the presiding officer and the consent of the designated ED official and the lender any time schedule specified in this section may be shortened.

(20 U.S.C. 1080, 1082, 1088f-1)

§ 682.707 Initial and final decisions.

(a) The presiding officer issues an initial decision in any limitation, suspension, or termination proceeding based on findings of fact and conclusions of law. The presiding officer shall base findings of fact only on evidence considered at the hearing and matters given official notice. The presiding officer's initial decision is mailed promptly to the lender.

(b) In a suspension proceeding, the Secretary reviews the presiding officer's initial decision and issues a final decision. The Secretary adopts the initial decision unless it is clearly unsupported by the evidence.

(c) (1) In a limitation or termination proceeding, the presiding officer's initial decision automatically becomes the Secretary's final decision 20 days after it is issued unless, within that 20-day period, the lender or designated ED official appeals the decision to the Secretary.

(2) Within a period of time specified by the Secretary the appealing party may submit additional written material including exceptions to the initial decision, proposed findings and conclusions, and supporting briefs and statements. The Secretary sets a time by which the opposing party shall respond. Any party submitting material to the Secretary shall provide a copy to each party that participated in the hearing.

(3) The presiding officer's initial decision limiting or terminating the lend-

er's eligibility does not take effect pending the appeal, unless the Secretary determines that a stay of the effective date would seriously and adversely affect the FISLP or students.

(4) After an appeal the Secretary issues a final decision affirming, modifying, or reversing the initial decision, including a statement of reasons for the Secretary's decision.

(20 U.S.C. 1080, 1082, 1088f-1)

§ 682.708 Verification of mailing dates.

The Department's mailing dates are verified by the original receipts from the U.S. Postal Service.

(20 U.S.C. 1080, 1082, 1088f-1)

§ 682.709 Effect of suspension or termination proceeding.

After the effective date of a lender's suspension or termination, the Secretary does not insure new loans made by that lender. Also, the Secretary may prohibit the lender from making further disbursements on a loan for which an insurance commitment already has been issued.

(20 U.S.C. 1080, 1082, 1088f-1)

§ 682.710 Limitation.

A limitation may include—

(a) A limit on the number or total amount of FISLP loans that a lender may make, purchase, or hold;

(b) A limit on the number or total amount of FISLP loans a lender may make to students at a particular school; and

(c) Other reasonable requirements or conditions.

(20 U.S.C. 1080, 1082, 1088f-1)

§ 682.711 Reimbursements, refunds, and offsets.

(a) The Secretary, designated ED official, or presiding officer may require a lender to take reasonable corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(b) The corrective action may include payment to the Secretary or to designated recipients of any funds that the lender improperly received, withheld, disbursed, or caused to be disbursed. Corrective action may, for example, relate to—

(1) Interest benefits, special allowance, or other claims paid by the Secretary; or

(2) Required refunds to students, in the case of a school lender.

(c) If a final decision requires a lender to reimburse or make any payment to the Secretary, the Secretary may offset these claims against any benefits or claims due the lender.

(20 U.S.C. 1080, 1082, 1088f-1)

§ 682.712 Reinstatement after termination.

(a) A lender whose eligibility has been terminated may file a request for reinstatement of its eligibility. This request may not, however, be filed within 18 months of the effective date of the termination.

(b) The reinstatement request must be in writing and must show that the lender has corrected the violation(s) on which its termination was based and meets all qualifications for eligibility.

(c) A school lender whose eligibility as a participating school has been terminated under 34 CFR Part 668, General Provisions for Student Assistance Programs, may not be reinstated as a FISLP lender until it is reinstated as a participating school. However, the school may request reinstatement as both a school and a lender at the same time.

(d) The Secretary, within 60 days of receiving the reinstatement request—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to limitations.

(e) (1) If the Secretary denies the lender's request or allows reinstatement subject to limitation(s) the lender, upon request, will be granted an opportunity, including a meeting, to show why it should be fully reinstated.

(2) A lender that is reinstated with limitations may participate in the FISLP under the limitations pending this appeal.

(20 U.S.C. 1080, 1082, 1088f-1)

§ 682.713 Removal of limitation.

(a) A lender may request removal of the Secretary's limitation imposed under these regulations no sooner than 12 months after the effective date of the limitation.

(b) The request must be in writing and show that the lender has corrected the violation(s) on which the limitation was based.

(c) The Secretary, within 60 days of receiving the request, either—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to other limitations.

(d) If the Secretary denies the request or establishes other limitations the lender, upon request, is given an opportunity including a meeting to show why its eligibility should be fully reinstated.

(e) A lender may continue to participate in the FISLP under the limitations pending this appeal.

(20 U.S.C. 1080, 1082, 1088f-1)

APPENDIX A—STANDARDS FOR ACCEPTABLE REFUND POLICIES BY PARTICIPATING SCHOOLS

For purposes of § 682.608(b), the Secretary considers guidelines VI, VII, and VIII of the following document to be acceptable elements of a fair and equitable school refund policy. The document, which is reproduced in its entirety for the convenience of the reader, was developed by the National Association of College and University Business Officers. The document does not affect a school's obligation to comply with other Department of Education regulations.

Policy Guidelines for Refund of Student Charges

(I) *The governing board of the institution should review and approve the schedule of all institutional charges and refund policies applicable to students.* The pricing of services and refund policies have important consequences to students, parents, the institution, and society; as such, pricing and refund policies should receive board attention and approval.

(II) *Institutions should seek consumer views in the process of establishing and amending charge and refund structures.* Decisions regarding institutional funds are ultimately the sole responsibility of the institution's legally designated fund custodians. However, consumer concerns do affect decision making, and involving consumers in decision making related to charges and refunds is a desirable approach for assessing student needs and creating public awareness of institutional requirements.

(III) *Institutions should publish a current schedule of all student charges, a statement of the purpose for such charges, and related refund policies, and have them readily available free of charge to current and prospective students.* Students and parents have a right to know what charges they will be expected to pay and what will or will not be refunded. They also have a right to know what services accompany payment of the charges. Informational materials published free for students and prospective students are ideal for this purpose.

(IV) *Institutions should clearly designate all optional charges as "optional" in all published schedules and related materials. Clearly, charges that are mandatory and charges that are optional must be plainly differentiated in all printed materials.* Also, the institution should state clearly in its schedule if a charge is optional for some students but required for others. Statements accompanying the schedule may include institutional endorsements of the optional program or service.

(V) *Institutions should clearly identify charges and deposits that are nonrefundable as "nonrefundable" on all published schedules.* Institutions determine on an individual basis which of their charges are refundable or non-refundable. In general, admission fees, application fees, laboratory fees, facility and student activity fees, and other similar charges are not refundable. These fees are generally charged to cover the cost of activities such as processing applications and other student information, reserving academic positions, and establishing the limits of institutional programs and services, reserving housing space, and otherwise setting the fixed costs of the institution for the coming academic periods.

Institutions determine on an individual basis which of their deposits are refundable or nonrefundable. Some deposits will be nonrefundable or will be credited to a student's account (e.g., tuition deposits). Others are refundable according to the terms of the deposit agreement (e.g., deposits for breakage).

(VI) *Institutions should refund housing rental charges, less a deposit, so long as written notification of cancellation is made prior to a well-publicized date that provides reasonable opportunity to make the space available to other students.* Written notification on or before the beginning of the term of the contract is necessary to ensure utilization of housing units. During the term of the contract, room charges are generally not refundable. However, based on the program offered, space availability, debt service

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requirements, State and local laws, and other individual circumstances, institutions may provide for some more flexible refund guideline for housing.

(VII) *Institutions should refund board charges in full, less a deposit, if written notification of cancellation is made prior to a well-publicized date that falls on or before the beginning of the term of the contract. Subsequent board charges should be refunded on a pro rata basis less a withdrawal fee.* It is reasonable to make a refund for those goods and services not consumed. The withdrawal charge should reflect that portion of an institution's costs that are fixed for the term of the contract.

(VIII) *The institutional tuition refund policy for an academic period should include the following minimum guidelines:*

A. *The institution should refund 100 percent of the tuition charges, less a deposit fee, if written notification of cancellation is made prior to a well-publicized date that falls on or before the first day of classes.*

B. *The institution should refund at least 25 percent of the tuition charge if written notification of withdrawal is made during the first 25 percent of the academic period.* It is reasonable to refund tuition charges on a sliding scale if a student withdraws from his or her program prior to the end of the first 25 percent of the academic period unless state law imposes a more restrictive refund policy.

(IX) *The institution should assess no penalty charges where the institution, as opposed to the student, is in error. The institution should make refunds in cases where the institution has assessed charges in error.* Penalty charges, such as those involving late registration fees, change of schedule fees, late payment fees, should not be assessed if it is determined that the student is not responsible for the action causing the charge to be levied.

(X) *Institutions should advise students that any notifications of withdrawal or cancellation and requests for refund must be in writing and addressed to the designated institutional officer.* A student's written notification of withdrawal or cancellation and request for a refund provides an accurate record of transactions and also ensures that such request will be processed on a timely basis. Acceptance of oral requests is an undesirable practice.

(XI) *Institutions should pay or credit refunds due on a timely basis.* The definition of "timely basis" should include the time required to process a formal student request for refund, to process a check if required, and to allow for mail delivery, when necessary. If an institution has a policy that a refund of an inconsequential amount will not be made, this policy should be published in part of all materials related to refund policies.

(XII) *Institutions should publicize, as a part of their dissemination of information on charges and refunds, that an appeals process exists for students or parents who feel that individual circumstances warrant exceptions from published policy. The informational materials should include the name, title, and address of the official responsible.* Although charges and refund policies should reflect extensive consideration of student and institutional needs, it will not be possible to encompass in these structures the variety of personal circumstances that may exist or develop. Institutions are required to provide a system of due process to their students, and charges and refund policies are legitimately a part of that process. Students and parents should be informed regularly of procedures for requesting information concerning exceptions to published policies.

[46 FR 3872, Jan. 16, 1981]

PART 683—PLUS PROGRAM

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APPENDIX A—STANDARDS FOR ACCEPTABLE REFUND POLICIES BY PARTICIPATING SCHOOLS.

AUTHORITY: Title IV, Part B, of the Higher Education Act of 1965, as amended (20 U.S.C. 1071 to 1087-2), unless otherwise noted.

SOURCE: 47 FR 17206, Apr. 21, 1982, unless otherwise noted.

Subpart A—Purpose and Scope

§ 683.1 The PLUS program.

(a) The PLUS program makes loans available to independent undergraduate students, graduate and professional students, and the parents of dependent undergraduate students. Each borrower must use the loan funds to pay for the student's educational costs. Lenders loan their own funds, and the Federal Government or a guarantee agency insures against loss. The program has two parts: guarantee agency programs and the Federal PLUS program.

(1) State agencies or private nonprofit agencies guarantee loans and are reimbursed by the Secretary for part or all of the insurance claims they pay to lenders. Guarantee agency programs must meet certain Federal requirements, but there may be variation among programs in such areas as the loan maximums and the borrower's or the student's eligibility.

(2) The Federal PLUS program operates in States not served by guarantee agencies and in certain prescribed circumstances in which a guarantee agency program does not authorize loans to serve eligible PLUS borrowers in a State. The Secretary directly insures lenders against losses on Federal PLUS loans.

(b) *Participation in the PLUS program.* (1) Banks, savings and loan associations, credit unions, pension funds, insurance companies, schools, State agencies and, in certain instances, the Student Loan Marketing Association may be lenders. The Student Loan Marketing Association and some State agencies purchase and hold loans and function as secondary markets.

(2) Most colleges and universities, and many vocational, technical, and correspondence schools are eligible to participate as educational institutions.

(3) Information for parents and students about the PLUS program and the Guaranteed Student Loan program (GSLP) is available on request from the Department of Education.

(4) All lenders, schools, parent borrowers, and students must meet certain requirements in order to participate in the PLUS program. These regulations contain all of the eligibility requirements for the Federal PLUS program and Federal eligibility requirements for participation in guarantee agency programs. Each guarantee agency may establish additional requirements within these Federal limits.

(c) *Repayment.* A borrower who obtains a loan under the PLUS program is obligated to repay the lender the full amount borrowed, plus interest. Unlike the interest on a student loan under the GSLP, interest on a PLUS loan is not subsidized by the Secretary, and the borrower must begin payment on the loan within 60 days after the loan is disbursed. In some cases repayment may be deferred for a time, but the borrower is still responsible for repaying the entire loan amount plus interest. The borrower's obligation to repay is cancelled only if he or she dies or becomes totally and permanently disabled or if the loan is discharged in bankruptcy.

(d) *Default.* If a borrower defaults on a loan, the Secretary or the guarantee agency pays the lender the amount of its loss. The borrower then owes the debt to the Secretary or the guarantee agency. The Secretary or guarantee agency actively attempts to collect the debt.

(20 U.S.C. 1071 to 1087-2)

§ 683.2 Guarantee agency programs.

(a) The Secretary pays special allowance to lenders on guarantee agency loans. The Secretary also pays a PLUS borrower's loan obligation if the borrower dies, or becomes totally and permanently disabled, or if the loan is discharged in bankruptcy.

(b) The Secretary pays 80 percent of the guarantee agency's default losses under a reinsurance agreement. If the guarantee agency meets additional requirements, the Secretary pays up to 100 percent of the agency's default losses, depending on its default experience.

(c) The Secretary encourages State and private nonprofit guarantee agencies to establish PLUS programs. Federal loan advances are available to help start or strengthen an agency's reserve fund, which backs its PLUS and GSLP loan guarantees. Administrative cost allowances based upon the dollar amount of the GSLP and PLUS loans guaranteed are also available to the agencies.

(d) To administer a PLUS program and to qualify itself and lenders for these benefits, an agency must meet the requirements under subparts B, C, and E.

(20 U.S.C. 1071, 1072, 1078-1, 1078-2, 1082, 1087, 1087-1)

§ 683.3 The Federal PLUS program.

(a) *Where does the Federal PLUS program operate?* The specific conditions under which the Federal PLUS program may operate in a State are given in § 683.50. In general, the Federal PLUS program is available to all lenders in a State if there is no guarantee agency program in that State which insures PLUS loans.

(b) *Payments to lenders.* Lenders qualify for the payment of special allowance on Federal PLUS loans. The Secretary pays a borrower's loan obligation if the borrower dies or becomes totally and permanently disabled or if the loan is discharged in bankruptcy. The Secretary also pays the lender's insurance claim if the borrower defaults.

(c) To qualify for Federal insurance and special allowance benefits, the lender must meet certain requirements established by law and these regulations.

(20 U.S.C. 1071 to 1087-2)

§ 683.4 Applicability of subparts of this regulation.

Subpart B contains general provisions that are applicable to all PLUS program participants. In addition, guarantee agency programs are subject to subparts C and E, and the Federal PLUS program is subject to subparts D, E, and F. Schools are governed by subpart E.

(20 U.S.C. 1071 to 1087-2)

Subpart B—General Provisions

§ 683.10 General definitions.

Academic year: (a) A period of time, typically eight or nine months, in which a full-time student is expected to complete the equivalent of at least two semesters, two trimesters or three quarters at a school using credit hours; or

(b) At least 900 clock hours of training for a program at a school using clock hours; or

(c) Eighteen months for a correspondence program.

Act: Title IV, Part B of the Higher Education Act of 1965, as amended (20 U.S.C. 1071 *et seq.*).

Borrower: A graduate or professional student, an independent undergraduate student, or one or more of a dependent undergraduate student's parents to whom a PLUS loan is made. If the loan is made to two eligible parents as co-makers, each parent is liable for repayment of the entire amount of the loan, including interest, and the loan is eligible for deferment, cancellation, or forbearance benefits only if both parents qualify for such benefits.

Clock hour: A period of time that is the equivalent of—

(a) A 50 to 60 minute class, lecture, or recitation; or

(b) A 50 to 60 minute faculty-supervised laboratory, shop training, or internship.

Commercial lender: A commercial bank, savings and loan association, credit union, or mutual savings bank.

Default: The failure of a borrower to make an installment payment when due, or to meet other terms of the promissory note under circumstances where the Secretary or the pertinent guarantee agency finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay, provided that this failure persists for—

(a) 120 days for a loan repayable in monthly installments; or;

(b) 180 days for a loan repayable in less frequent installments.

Dependent student: A student who is not an independent student.

Disbursement: The transfer of funds by a lender to a borrower by means of issuing a check or draft payable to the order, and requiring the personal endorsement, of the borrower.

Due diligence: The utilization by a lender in the making and collection of PLUS loans of practices at least as extensive and forceful as those generally practiced by financial institutions for consumer loans. The procedures for establishing due diligence under the Federal PLUS program are described in § 683.59 and § 683.60. The procedures for establishing due diligence under a guarantee agency program are set forth by the guarantee agency.

Endorser: An individual who is secondarily liable for the loan obligation.

Enrolled: The status of a student who—

(a) Has completed the registration requirements at the school he or she is attending and has commenced the attendance period; or

(b) Has been admitted into a correspondence study program and has submitted one lesson, completed by him or her after acceptance for enrollment and without the help of a representative of the school.

Estimated cost of attendance: (a) Except as provided in paragraph (b) of this definition, the tuition and fees applicable to a student, plus the school's estimate of other expenses reasonably related to attendance at that school for the period for which the loan is sought. These costs include, but are not limited to, reasonable transportation and commuting costs, costs for room, board, books, and supplies, the insurance premium for the loan, and, if the student has applied for a GSLP loan for the same academic period, the origination fee and insurance premium for that loan.

(b) For a student enrolled in a correspondence study program, only the insurance premium for the loan and the contract price of the program, and, if the student has applied for a GSLP loan for the same academic period, the origination fee and insurance premium for that loan. However, costs described in paragraph (a) of this definition that are incurred by the student for fulfilling a required period of residential training in connection with the correspondence study program may also be included in the estimated cost of attendance.

Estimated financial assistance: For the period for which a loan is sought, the estimated amount of assistance that a school is aware a student has been or will be awarded in Federal, State, or privately supported scholarship, grant, work, or loan programs. Any other PLUS loans applied for by the student or the student's parents on that student's behalf are considered financial assistance. The following are also considered financial assistance:

(a) Veterans' benefits paid under chapters 32, 34 and 35 of Title 38 of the United States Code.

(b) Students' benefits under Social Security.

Resources or financial support from the student or the student's family may not be considered financial assistance.

Federal Insured Student Loan Program (FISLP): The component of the GSLP under which the Secretary directly insures loans, with no participation by guarantee agencies.

Full-time student: (a) A student enrolled in an institution of higher education (other than a correspondence school) who is carrying a full-time academic workload as determined by the school, under standards applicable to all students enrolled in that student's particular program. The student's workload may include any combination of courses, work experience, research, or special studies, whether or not for credit, that the school considers sufficient to classify the student as a full-time student; or

(b) A student enrolled in a vocational school (other than a correspondence school) who is carrying a workload of not less than 24 clock hours per week or 12 semester or quarter hours of instruction, or its equivalent.

Graduate or professional student: A student who—

(a) Is pursuing a program, or has a bachelor's degree and is enrolled in courses which are normally part of a program, leading to a graduate or professional degree or certificate at an institution of higher education; and

(b) Has successfully completed the equivalent of at least three years of full-time study at an institution of higher education either prior to entrance into the program or as part of the program itself.

Guarantee agency: A State or private nonprofit agency that administers a loan insurance program under the Act.

Guaranteed Student Loan program (GSLP): A loan program as described in 34 CFR Part 682 in which the Federal Government insures or reinsures low-interest, long-term educational loans to eligible students. Loans are made under the GSLP by eligible lending institutions, such as commercial lenders, pension funds or insurance companies.

(a) Under the Federal Insured Student Loan program (FISLP), loans are directly insured by the Federal Government.

(b) Under guarantee agency programs, loans are insured by State agencies or private nonprofit agencies and are re-insured by the Federal Government.

Half-time student: An enrolled student who is carrying a half-time academic workload, as determined by the school, and that amounts to at least one-half the workload of a full-time student. A student enrolled solely in an eligible program of study by correspondence is considered a half-time student.

Holder: An eligible lender in possession of a PLUS loan.

Incentive payment: A payment to a lender that is made for the purpose of encouraging the lender to make one or more PLUS loans.

Independent student: (a) For a period of instruction which begins prior to July 1, 1982, a student who for 1980 and 1981—

(1) Has not lived and will not live for more than six weeks in each year in the home of his or her parent(s);

(2) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes by his or her parent(s);

(b) For a period of instruction beginning on or after July 1, 1982, but before July 1, 1983—

(1) A single student who for 1981 and 1982—

(i) Has not lived and will not live for more than six weeks in either year in the home of his or her parent(s);

(ii) Has not been claimed and will not be claimed as a dependent for Federal income tax purposes by his or her parent(s); and

(iii) Has not received and will not receive financial assistance of more than $750 in either year from his or her parent(s); or

(2) A married student who for 1982—

(i) Has not lived and will not live for more than six weeks in the home of his or her parent(s);

(ii) Has not been claimed and will not be claimed as a dependent for Federal income tax purposes by his or her parent(s); and

(iii) Has not received and will not receive financial assistance of more than $750 from his or her parent(s).

(3) If a student's mother and father are divorced or separated, only one parent will be considered to be the parent of the student for purposes of applying the criteria in paragraphs (1) and (2) of this definition. To determine that parent—

(i) Choose the parent with whom the student resided for the greater portion of the 12 month period preceding the date of application.

(ii) If the preceding criterion does not apply, choose the parent who provided the greater portion of the student's support for the 12 month period preceding the date of application.

(iii) If neither of the preceding criteria apply, choose the parent who provided the greater support for the period commencing January 1 of the calendar year which immediately precedes the first calendar year of the period of instruction and ending 12 months prior to the date of applications.

(4) If either of the parents have died, the institution shall consider only the surviving parent as the parent for purposes of applying the criteria in paragraphs (1) and (2) of this definition. If both parents have died, the institution shall not consider either parent.

Institution of higher education:

(a) An institution that—

(1) Is in a State;

(2) Admits as a regular student only a person who—

(i) Has a certificate of graduation or its equivalent from a secondary school; or

(ii) Is beyond the age of compulsory school attendance;

(3) Is legally authorized in each State in which it is physically located to provide, and provides within that State, a program of postsecondary education that—

(i) Awards a bachelor's degree; and

(ii) Provides not less than a two-year program which is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5)(i) Is accredited by a nationally recognized accrediting agency or association approved by the Secretary for this purpose; or

(ii) If not so accredited—

(A) Is an institution which the Secretary determined will meet the accreditation standards of such an agency or association within a reasonable period of time; or

(B) Is an institution whose credits are transferrable, for credit on the same basis, to at least three institutions that are so accredited; or

(iii) If the Secretary determined that there is no nationally recognized accrediting agency or association qualified to accredit the type of school applying for eligibility, is approved by an advisory committee that the Secretary established, in accordance with the standards of content, scope and quality that the Committee prescribes for that purpose.

(b) The term also includes an institution that provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and, with the exception of paragraph (a)(3), meets the other requirements of paragraph (a) of this section.

(c) The Secretary publishes a list of nationally recognized accrediting agencies or associations that the Secretary has determined to be reliable authorities as to the quality of education or training offered.

Legal guardian: An individual who is appointed by a court as a "legal guardian" of a person and who is specifically required by the court to use his or her own financial resources to support that person.

Lender: A lender, including a subsequent holder, that is—

(a) A National or State-chartered bank, a mutual savings bank, a savings and loan association, or a credit union that—

(1) Is subject to examination and supervision in its capacity as a lender by an agency of the United States or of the State in which its principal place of operation is established; and

(2) Does not make or hold loans to students and parents under the GSLP and the PLUS program that total more than one-half of its consumer credit loan dollar volume, including home mortgages, unless it is a bank that is wholly owned by a State; or

(b) A pension fund as defined in the Employees Retirement Income Security Act; or

(c) An insurance company that is subject to examination and supervision by an agency of the United States or a State; or

(d) In any State, a single agency of the State or a single private nonprofit agency designated by the State; or

(e) For purposes only of purchasing and holding loans made by other lenders under this program, the Student Loan Marketing Association or an agency of any State functioning as a secondary market; or

(f) For purposes of making loans of last resort, to the extent authorized, under Section 428(h) or Section 439(q) of the Act—

(1) The Student Loan Marketing Association; or

(2) A State or private nonprofit guarantee agency; or

(3) A single agency of a State or a single non-profit private agency designated by a State; or

(4) An agency of a State functioning as a secondary market; or

(g) A participating school that—

(1) Is not a correspondence school. An eligible school that offers both correspondence study and noncorrespondence study programs may be an eligible lender only for students or parents of students enrolled in the noncorrespondence study programs; and

(2) Employs at least one full-time financial aid administrator.

National of the United States: (a) A citizen of the United States.

(b) A person who, though not a citizen of the United States, owes permanent allegiance to the United States.

Origination: A special relationship between a school and a lender, in which the lender delegates to the school substantial functions or responsibilities normally performed by lenders before making loans. In this situation, the school is considered to have "originated" a loan made by the lender. The Secretary determines that "origination" exists if—

(a) A school determines who will receive a loan and the amount of the loan; or

(b) The lender has the school verify the identity of the borrower or complete forms normally completed by the lender.

Parent: A person's mother or father or legal guardian. An adoptive parent is considered to be the person's mother or father.

Participating school: A school that has entered into an agreement with the Secretary under § 683.80 to participate in the PLUS program.

Post-deferment grace period: For a loan made prior to October 1, 1981, the six-month period following a deferment period during which time payments of principal and interest are suspended.

School: (a) An educational institution that is—

(1) An institution of higher education or a vocational school; or

(2) With respect to students who are nationals of the United States, a

school outside the United States that is comparable to an institution of higher education or to a vocational school and that has been approved by the Secretary for purposes of the PLUS program.

(b) The term includes only those individual units or programs within a school that have been determined by the Secretary to meet all the requirements for school eligibility.

(c) A school that employs or uses commissioned salespersons to promote the availability of the GSLP or the PLUS program is not eligible to participate in either program. For this purpose—

(1) A "commissioned salesperson" is one who receives compensation in any form or amount that is related to, or calculated on the basis of, student applications for enrollment, student enrollments, or student acceptances for enrollment; and

(2) "Promote the availability" means provide prospective or enrolled students or their parents with application forms, names of eligible lenders or other information designed to encourage the students or the parents of eligible students to seek GSLP or PLUS loans. This term does not include providing general financial aid information to prospective or enrolled students or their parents.

School lender: Any participating school that has been approved as a lender and has entered into a contract of insurance under the Federal PLUS program or a guarantee agency PLUS program.

State lender: In any State, a State agency or a single, private nonprofit agency designated by the State that has been approved as a lender and has entered into a contract of insurance under the Federal PLUS program or a guarantee agency PLUS program.

Totally and permanently disabled: Unable to engage in any substantial gainful activity because of a medically determinable impairment that is expected to continue for a long and indefinite period of time or to result in death.

Undergraduate student: A student who is not a graduate or professional student.

Vocational school: (a) A business or trade school, or technical institution, or other technical or vocational school that—

(1) Is in a State;

(2) Admits as a regular student only a person who—

(i) Has completed or left elementary or secondary school; and

(ii) Has the ability to benefit from the training offered by the school.

(3) Is legally authorized in each State in which it is physically located to provide, and provides within that State, a program of postsecondary vocational or technical education that—

(i) Is designed to provide occupational skills more advanced than those generally offered at the high school level and to fit individuals for useful employment in recognized occupations; and

(ii) Provides no less than 300 clock hours of classroom instruction or its equivalent, or in the case of a program offered by correspondence, requires not less than an average of 12 hours of preparation per week over each 12-week period and completion in not less than 6 months; and

(iii) In the case of a flight school program, maintains current valid certification by the Federal Aviation Administration;

(4) Has been in existence for 2 years or has been specially determined by the Secretary to be a school meeting the other requirements of this paragraph and to be eligible to participate in the PLUS program; and

(5)(i) Is accredited by a nationally recognized accrediting agency or association recognized by the Secretary for this purpose; or

(ii) In the case of a public institution offering postsecondary vocational education, is approved by a State approval agency recognized by the Secretary for this purpose; or

(iii) If the Secretary determines that there is no nationally recognized accrediting agency or association qualified to accredit the type of school applying for eligibility, is approved by a State approval agency recognized by the Secretary for this purpose; or

(iv) If the Secretary determines that there is no nationally recognized accrediting agency or association or

State approval agency qualified to accredit or approve the type of school applying for eligibility, is approved by the National Advisory Committee on Accreditation and Institutional Eligibility, in accordance with the standards of content, scope, and quality that the Committee prescribes for that purpose. A school that has been approved by the Committee must, in order to remain an eligible school, become accredited within 3 years after the Secretary has designated a nationally recognized accrediting or State approval agency for the type of school applying for eligibility.

(b) For the purpose of this definition, the Secretary publishes a list of nationally recognized accrediting agencies or associations and State approval agencies that the Secretary has determined to be reliable authorities as to the quality of education or training offered.

(20 U.S.C. 1071 to 1087-2; 1088 to 1094)

§ 683.11 Borrower and student eligibility.

(a) *Eligible parent borrower.* A parent, as defined in § 683.10, is eligible to receive a PLUS loan if the parent—

(1) Is borrowing to pay for the educational costs of an eligible student, set forth in paragraph (c) of this section;

(2) Meets one of the qualifications pertaining to citizenship and residency status, set forth in paragraph (e) of this section; and

(3) Is eligible under the provisions concerning defaults and over payments, set forth in paragraphs (f) and (g) of this section.

(b) *Eligible student borrower.* An independent undergraduate student or a graduate or professional student, as defined in § 683.10, is eligible to receive a PLUS loan if he or she—

(1) Is enrolled or accepted for enrollment on at least a half-time basis in a participating school;

(2) Is eligible under provisions concerning enrollment set forth in paragraph (d) of this section;

(3) Meets one of the qualifications pertaining to citizenship and residency status, set forth in paragraph (e) of this section, and

(4) Is eligible under the provisions concerning defaults and overpayments, set forth in paragraphs (f) and (g) of this section.

(c) *Eligible student.* A student is eligible to have his or her parent borrow a PLUS loan to pay for his or her educational costs if he or she—

(1) Is a dependent student;

(2) Is enrolled or accepted for enrollment as an undergraduate student on at least a half-time basis in a participating school;

(3) Is eligible under the provisions concerning enrollment set forth in paragraph (d) of this section;

(4) Authorizes the school to return any refund of school charges attributable to the PLUS loan to the lender;

(5) Meets one of the qualifications pertaining to citizenship and residency status, set forth in paragraph (e) of this section; and

(6) Is eligible under the provisions concerning defaults and overpayments, set forth in paragraphs (f) and (g) of this section.

(d) *Enrollment status.* To be eligible to borrow or to have his or her parents borrow, a student must meet the following requirements—

(1) If currently enrolled, is maintaining satisfactory progress, as determined by the school;

(2) If enrolled or accepted for enrollment in a vocational school, is attending neither elementary nor secondary school and has the ability to benefit from the training offered, as required under the definition of "vocational school" in § 683.10;

(3) If enrolled or accepted for enrollment in a school outside the United States, is a national of the United States;

(4) If enrolled in a flight school program at a vocational school or an institution of higher education, meets the additional requirements in paragraph (h) of this section.

(e) *Citizenship and residency status.* Each borrower and each student for whom a parent is borrowing, must be one of the following:

(1) A citizen of the United States.

(2) A national of the United States.

(3) A permanent resident of the United States.

(4) In the United States for other than a temporary purpose and able to provide evidence from the Immigration and Naturalization Service of his or her intent to become a permanent resident.

(5) A permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands.

(f) *Effect of default on eligibility.* (1) Except as provided in paragraph (f)(4) of this section, a parent is ineligible to borrow a PLUS loan if the parent is in default on a National Defense or Direct Student Loan (NDSL) or a GSLP or PLUS loan received to cover costs of attendance at the school in which the student for whom the parent is borrowing is enrolled or accepted for enrollment.

(2) Except as provided in paragraph (f)(4) of this section, a dependent undergraduate student is ineligible to have a parent borrow on his or her behalf if the student is in default on an NDSL, GSLP or PLUS loan received to cover costs of attendance at the school in which the student is enrolled or accepted for enrollment.

(3) Except as provided in paragraph (f)(4) of this section, an independent undergraduate or a graduate or professional student is ineligible to borrow a PLUS loan if the student is in default on an NDSL, GSLP or PLUS loan received to cover costs of attendance at the school in which the student is enrolled or accepted for enrollment.

(4) In a situation described in paragraph (f)(1), (f)(2) or (f)(3), the borrower may receive a PLUS loan only after the person who is in default has made satisfactory arrangements to repay the defaulted loan. The person who is in default must make arrangements to repay that—

(i) In the case of a default on a Federal PLUS or FISLP loan, are satisfactory to the Secretary;

(ii) In the case of a default on a PLUS or GSLP loan insured by a guarantee agency, are satisfactory to that guarantee agency; or

(iii) In the case of a default on an NDSL loan, are satisfactory to the Secretary or the school.

(5)(i) In determining whether a parent is in default on an NDSL, GSLP, or PLUS loan, a school may rely on that parent's written statement that he or she is not in default, unless the school has information to the contrary.

(ii) In determining whether a student is in default on an NDSL, GSLP, or PLUS loan, a school may rely on that student's written statement that he or she is not in default, unless the school has information to the contrary.

(6) The Secretary does not consider an NDSL, GSLP, or PLUS loan that is discharged in bankruptcy to be in default for purposes of this section.

(g) *Effect of overpayment of a grant on eligibility.* (1) Except as provided in paragraph (g)(2) of this section, a parent is ineligible to borrow a PLUS loan, a student is ineligible to borrow a PLUS loan, and a student is ineligible to have a parent obtain a PLUS loan on the student's behalf, if the parent or student owes a refund on a grant made under Title IV of the Act that was received to cover costs of attendance at the school in which the student is enrolled or accepted for enrollment.

(2) In a situation described in paragraph (g)(1), the borrower may receive a PLUS loan, or a parent may borrow on the student's behalf, under the following conditions:

(i) *Overpayment of a Pell Grant.* If the borrower or student for whom the loan is intended is overpaid on a Pell Grant, that parent or student may still be eligible under the PLUS program if—

(A) The borrower and student are otherwise eligible; and

(B) The overpayment can be eliminated in the award year (as defined in 34 CFR 690.2) in which it occurred by adjusting the subsequent Pell Grant payments for that award year.

(ii) *Overpayment of a Pell Grant due to school error.* If the borrower or student for whom the loan is intended is overpaid as a result of school error, and the overpayment cannot be eliminated by adjusting subsequent Pell Grant payments in the award year, that borrower or student may still be eligible under the PLUS program if—

(A) The borrower and student are otherwise eligible; and

(B) The person who received the overpayment acknowledges in writing the amount of the Pell Grant overpayment and agrees to repay it in a reasonable period of time.

(iii) *Overpayment on a Supplemental Educational Opportunity Grant.* If the borrower or student for whom the loan is intended is overpaid on a Supplemental Educational Opportunity Grant, that borrower or student may still be eligible under the PLUS program if—

(A) The borrower and student are otherwise eligible; and

(B) An adjustment in subsequent financial aid payments (other than Pell Grants) eliminates the overpayment in the same award year (as defined in 34 CFR 676.2) in which it occurred.

(h) *Additional eligibility requirements for a student attending flight school.* A student is eligible to borrow or to have a parent borrow a PLUS loan on his or her behalf for enrollment in a flight school program at a vocational school or an institution of higher education only if that student—

(1) Plans to pursue or is pursuing a full-time program leading to commercial flight ratings;

(2) Has completed ground school training or is taking it concurrently with flight training;

(3) Holds a private pilot's certificate or has sufficient flight hours to qualify for such certificate; and

(4) Holds at least a Class II medical certificate.

(i) For purposes of this Part—

(1) "Overpayment of a grant" means that a borrower or student received payment of a grant greater than the amount he or she was entitled to receive;

(2) A "grant made under Title IV of the Act" means—

(i) A Pell Grant, authorized under Part A, Subpart I of Title IV of the Act;

(ii) A Supplemental Educational Opportunity Grant, authorized under Part A, Subpart 2 of Title IV of the Act; and

(iii) A State Student Incentive Grant, authorized under Part A, Subpart 3 of Title IV of the Act.

(3) A "National Defense Student Loan" (NDSL) means a loan made under Title II of the National Defense Education Act; and

(4) A "National Direct Student Loan" (NDSL) means a loan made under Part E of Title IV of the Act.

(20 U.S.C. 1077, 1078, 1078-2, 1091)

§ 683.12 Statement of educational purpose.

(a) No loan may be insured under this program unless the borrower declares in a written statement that the loan proceeds will be used solely for costs of attendance at the school that the borrower or the student on whose behalf the parent is borrowing is or will be attending.

(b) The statement must be in a form approved by the Secretary.

(c) The borrower must file his or her statement with the lender. The lender shall retain a copy of the statement as required in § 683.68 or by a guarantee agency that insures the loan.

(20 U.S.C. 1078-2, 1082, 1091).

§ 683.13 Permissible charges to borrowers.

(a) *Interest*—(1) *Rate.* (i) Exclusive of any insurance premium, and unless affected by section 427A(c)(2) of the Act, a lender may charge a maximum interest rate of 14 percent per year on the unpaid principal balance of a PLUS loan.

(ii) The unpaid principal balance of a loan may include capitalized interest under circumstances described in paragraph (a)(3) of this section.

(2) *Method of calculation.* The lender shall calculate the interest from the date of disbursement of funds to the borrower. In calculating the interest, the lender may use either of the following methods:

(i) The "Approximate Time-Ordinary Interest" method; or

(ii) The "Exact Time-Exact Interest" method. Use of the "Banker's Rule" ("Exact Time-Ordinary Interest") is prohibited because this method results in an actual rate in excess of the allowable rate of interest.

(3) *Capitalizing interest.* "Capitalization" means increasing the unpaid principal of a loan through the addi-

tion of accrued interest to the previously unpaid principal balance.

(i) *Federal PLUS program.* For a PLUS loan insured under the Federal program, a lender may capitalize accrued interest covering any period in which the borrower is unable or is not required to make payments of principal. The lender may add this accrued interest to the borrower's unpaid principal balance when the borrower is scheduled to begin or resume repayment.

(ii) *Guarantee agency PLUS programs.* For a PLUS loan insured under a guarantee agency program, a lender may add accrued interest and unpaid insurance premiums to the borrower's unpaid principal balance as authorized by guarantee agency policy.

(4) *Payment.* Interest is payable by the borrower in installments over the life of the loan. However, a lender may permit a borrower to postpone payment of interest as described in paragraph (a)(3) of this section. This accrued interest either may be paid when payment of principal begins or resumes or may be capitalized.

(b) *Insurance premium.* (1) The term "insurance premium" covers those charges made by the guarantee agency or the Secretary to the lender to insure the lender of a PLUS loan against losses it may suffer if the borrower defaults or files a bankruptcy petition. The insurance premium also may be used by the guarantee agency or the Secretary to cover costs incurred in the administration of the applicable loan insurance program. Premiums may not be retained by the lender to cover the costs of making a loan or for any other purpose.

(2) Specific rules on insurance premiums, including the rate that may be charged the lender and passed on to the borrower and the method of calculation, are contained in § 683.31 for PLUS loans insured under guarantee agency programs, and § 683.56 for Federal PLUS loans.

(c) *Late charges.* To the extent provided in the promissory note and permitted by State law, the lender may require that the borrower pay a late charge if the borrower fails to pay any or all of a required installment payment within 10 days after its due date or fails to provide written evidence that verifies eligibility for authorized deferment of the payment. The late charge may not exceed 5 cents for each dollar of each installment due or $5 for each installment, whichever is less.

(d) *Collection charges*—(1) *Permissible charges.* If provided in the note, the lender also may require that the borrower pay the lender for certain reasonable costs incurred by the lender or its agent in collecting any installment not paid when due. These costs may include attorney's fees, court costs, telegrams, and long-distance phone calls.

(2) *Non-permissible charges.* Other than those authorized by this section, no charges may be passed on to the borrower, either directly or indirectly. Examples of charges that are not permitted are as follows:

(i) Normal collection costs associated with preparing letters or notices or making personal contacts or local telephone calls.

(ii) Fees charged by a servicing or collection or skip-tracing agency, to the extent they exceed permissible charges.

(iii) Loan origination fees.

(20 U.S.C. 1077, 1077a, 1078, 1078-2, 1079, 1082, 1087-1)

§ 683.14 Special allowance payments to lenders.

(a) *General.* (1) The Secretary pays a special allowance to lenders on all PLUS loans. The special allowance is equal to a percentage of the average unpaid principal balance, including capitalized interest, for all PLUS loans a lender has held during a 3-month period. The 3-month periods end (i) March 31; (ii) June 30; (iii) September 30; and (iv) December 31 of each year.

(2) If a lender makes or purchases loans with funds obtained from an Authority issuing obligations, the income from which is exempt from taxation under the Internal Revenue Code of 1954, the Secretary pays the special allowance to that lender on those loans only if the Authority has had a plan for doing business approved by the Secretary in accordance with section

420(b) of the Education Amendments of 1980 (Pub. L. 96-374).

(b) *Lender's reports.* To receive the special allowance payment, a lender shall submit periodic reports to the Secretary stating the average unpaid principal balance for all its PLUS loans. These reports must be in a form prescribed by the Secretary.

(c) *Determining the special allowance rate for loans made prior to October 1, 1981.* The percentage rate for the special allowance for a 3-month period is determined by—

(1) Subtracting 5.5 percent from the average of the bond equivalent rates of the 91-day Treasury bills auctioned during the 3-month period;

(2) Rounding the resulting percent upward to the nearest one-eighth of one percent; and

(3) Dividing the resulting percent by 4.

(d) *Determining the special allowance rate for loans made on or after October 1, 1981.* Unless affected by Section 427A(c)(2) of the Act, the percentage rate for the special allowance for a 3-month period is determined by—

(1) Subtracting 14 percent from the average of the bond equivalent rates of the 91-day Treasury bills auctioned during the 3-month period;

(2) Adding 3.5 percent to the resulting percent; and

(3) Dividing the resulting percent by 4.

(e) *Announcing the rate.* After the close of each 3-month period, the Secretary announces the rate of the special allowance for that period.

(f) *Determining the average unpaid principal balance.* (1) There are two methods a lender may use to determine the average unpaid principal balance for purposes of the special allowance:

(i) *The average quarterly balance method.* Add the unpaid principal balance of all loans outstanding on the first day of the 3-month period to the unpaid principal balance of all loans outstanding on the last day of the period and divide by 2.

(ii) *The average daily balance method.* Add the unpaid principal balance of all loans outstanding on each day of the 3-month period and divide by the number of days in that period.

(2) The lender may not change its method of determining the average unpaid principal balance without the prior written approval of the Secretary.

(3) For the purpose of this determination, a loan is considered outstanding if—

(i) The borrower has not repaid the loan;

(ii) The lender has not received payment on a claim for loss on the loan; and

(iii) The lender has not been advised that the Secretary or a guarantee agency has finally refused a claim for loss on the loan.

(g) *Special allowance rates applicable to loans made or purchased with funds obtained from the issuance of obligations that generate tax-exempt income.* (1) The Secretary pays a lender one-half the special allowance rate computed under paragraph (c) or (d) of this section for PLUS loans, for loans made prior to October 1, 1981, no less than the rate specified in paragraph (g)(2) of this section, if that lender makes or purchases those loans with funds obtained by the lender—

(i) From the issuance of obligations the income from which is exempt from taxation under the Internal Revenue Code of 1954; or

(ii) From collections, default reimbursements, interest, special allowances or other income obtained from loans made or purchased with funds obtained as described in subdivision (i) of this subparagraph; or

(iii) From the investment of funds obtained as described in subdivisions (i) or (ii) of this subparagraph.

(2) The minimum special allowance the Secretary pays to a lender for PLUS loans described in paragraph (g)(1) of this section, on loans made prior to October 1, 1981, is 0.5 percent per year.

(h) *Payment of penalty interest.* (1) If the Secretary has not authorized the United States Department of the Treasury to pay special allowance within 30 days after receipt of an accurate, timely and complete request for payment from any lender, the Secretary pays that lender an additional amount known as penalty interest.

(2) *Determining the amount of penalty interest.* (i) Penalty interest is the daily interest that accrues on the special allowance payments otherwise due to the lender. That interest is computed at the daily equivalent rate of the sum of the special allowance on a loan for the 3-month period for which the special allowance is being paid plus the interest rate at which the loan was made.

(ii) The Secretary pays penalty interest for—

(A) The 31st day after receipt of the request for payment or the 31st day after the final day of the period (or periods) covered by the request, whichever is later; and

(B) Each succeeding day until the Secretary authorizes payment. The day on which payment is authorized is also counted.

(20 U.S.C. 1078-2, 1082, 1087-1, Pub. L. 96-374, § 420(b))

§ 683.15 Prohibited transactions.

(a)(1) No points, premiums, payments, or additional interest of any kind may be paid or otherwise extended to any eligible lender or other party in order to—

(i) Secure funds for making PLUS loans; or

(ii) Induce a lender to make PLUS loans to either students or the parents of students of a particular school or a particular category of students or their parents.

(2) The following are examples of transactions which, if entered into for the purposes described in paragraph (a)(1)(i) or (ii) of this section, are prohibited:

(i) Cash payments by or on behalf of a school made to a lender or other party.

(ii) The maintaining of a compensating balance by or on behalf of a school with a lender.

(iii) Payments ostensibly made for other purposes.

(iv) Payments by or on behalf of a school to a lender of servicing costs on loans that the school does not own.

(v) Payment by or on behalf of a school to a lender of unreasonably high servicing costs on loans that the school does own.

(vi) Purchase by or on behalf of a school of stock of the lender.

(b) Except when purchased by the Student Loan Marketing Association or an agency of any State functioning as a secondary market or in other circumstances approved by the Secretary, notes, or any interest in notes, shall not be sold or otherwise transferred at discount if the underlying loans were made—

(1) By a school; or

(2) To students or parents of students attending a school by a lender having common ownership with that school.

(c) Except to secure a loan from the Student Loan Marketing Association or an agency of a State functioning as a secondary market or in other circumstances approved by the Secretary, a school, or a lender with respect to a loan made to a student or parent of a student attending a school having common ownership with the lender, may not pledge a loan made under the PLUS program as security for any loan bearing aggregate interest and other charges in excess of the sum of the interest rate applicable to the loan plus the rate of the then most recently prescribed special allowance under § 683.14.

(d) The prohibitions described in paragraphs (a), (b), and (c) of this section apply to any school or lender which would be a party to the prescribed transactions.

(e) If a school has an agreement with the Secretary under § 683.81, the performance by the school of substantial functions or responsibilities normally performed by a lender, which results in the school "originating" loans made by the lender, is not a prohibited transaction.

(f) *Warranty.* (1) Nothing in this section shall preclude a buyer of loans made by a school from obtaining a warranty from the seller of those loans.

(2) The warranty may cover future reductions by the Secretary or a guarantee agency in computing the amount of insurable loss, if any, on default claims filed on the loans where the reductions are attributable to an

act or failure to act of the seller or previous holder.

(3) The warranty shall not cover matters for which a purchaser is charged with responsibility under this part, such as due diligence in collecting loans.

(g) Section 490(c) of the Act provides that any person who knowingly and willfully makes an unlawful payment to an eligible lender as an inducement to make, or to acquire by assignment, a PLUS loan, shall upon conviction thereof be fined not more than $1,000 or imprisoned not more than one year, or both.

(20 U.S.C. 1078-2, 1082, 1097)

§ 683.16 Provision of loan information by lenders.

By no later than when the note is signed, the lender shall provide the borrower with thorough and accurate information regarding a loan made under the PLUS program including—

(a) The annual and aggregate maximum amounts that may be borrowed;

(b) The terms on which repayment of the loan will begin;

(c) The maximum number of years in which the loan must be repaid;

(d) The interest rate that must be paid, and the minimum amount of required monthly payment;

(e) Rights or options the borrower may have for deferment, cancellation, prepayment, consolidation, or other refinancing of the loan;

(f) A definition of default and the consequences to the borrower if he or she should default, including a description of any arrangements made with credit bureaus; and

(g) To the extent practicable, the effect that accepting the loan has on the eligibility of the borrower for future borrowing under the PLUS program and on the eligibility of that borrower and, in the case of a parent borrower, that student to receive student financial assistance under the Act.

(20 U.S.C. 1078-2, 1082, 1083a)

§ 683.17 Treatment of refunds by lenders.

(a) A lender shall treat a payment from a school representing a refund to a student who obtained a PLUS loan or whose parent obtained a PLUS loan on his or her behalf from that lender as a credit against the amount owed by the borrower on the PLUS loan.

(b) If a lender receives from a school a refund payment on a loan that is no longer held by that lender, the lender shall—

(1) Transmit the amount of the refund payment to the holder to whom the loan has been assigned with an explanation of the payment's source; and

(2) Provide simultaneous written notice to the borrower that a payment has been transferred to the new holder.

(20 U.S.C. 1078-2, 1082)

Subpart C—Guarantee Agency Programs

§ 683.30 Agreements between a guarantee agency and the Secretary.

(a) The Secretary enters into agreements with a guarantee agency, enabling the agency to participate in the PLUS program, if the Secretary and the guarantee agency have corresponding agreements in effect under the GSLP and the Secretary determines that the guarantee agency program meets the requirements of this subpart. Separate agreements, based on various requirements, are necessary for the agency to receive some or all of the benefits available to it.

(b) *Types of agreements.* There are six agreements. Specific requirements for each agreement, and additional requirements for receiving some benefits, are described in this subpart.

(1) *Basic PLUS program agreement.* A guarantee agency must have a basic agreement to participate in the PLUS program in any way. Under this agreement—

(i) Lenders may receive special allowance and penalty interest payments and, through the guarantee agency, death, disability, and bankruptcy claim payments;

(ii) The guarantee agency may apply for the primary administrative cost allowance, and for the agreements listed below.

(2) *Federal advances for reserve fund agreement.* A guarantee agency must

have this agreement to receive and use Federal advances to help establish or strengthen the reserve fund that backs the agency's PLUS loan guarantees.

(3) *Additional Federal advances for claim payments agreements.* A guarantee agency must have this agreement to receive and use Federal advances to pay PLUS program insurance claims.

(4) *Reinsurance agreement.* A guarantee agency must have a reinsurance agreement to receive reimbursement of 80 percent of its losses on default claims.

(5) *Supplemental reinsurance agreement.* A guarantee agency, with this agreement, receives reimbursement of up to 100 percent of its losses on default claims.

(6) *Secondary administrative cost allowance agreement.* A guarantee agency establishes this agreement by applying for and receiving the secondary administrative cost allowance.

(c) *Failure to comply with agreements.* If the Secretary finds that a guarantee agency has made incomplete or incorrect statements in connection with an agreement, or has failed to comply with an agreement or with applicable Federal law or regulations, the Secretary takes actions necessary to protect the interests of the United States. These actions may include—

(1) Withholding payments to the guarantee agency;

(2) Requiring reimbursement of payments; or

(3) Suspending or terminating an agreement.

(d) *Remedial actions.*

(1)(i) The Secretary or the guarantee agency may terminate any agreement upon 60 days written notice.

(ii) The Secretary terminates an agreement only under circumstances described in paragraph (c) of this section.

(iii) Termination does not affect obligations incurred under the agreement before the effective date of the termination.

(2) The Secretary's suspension or termination of an agreement, requirement of reimbursement, or withholding of payments is not final until the guarantee agency has been given reasonable notice of the intended action and an opportunity for a hearing. The Secretary withholds payments or suspends an agreement prior to giving notice and opportunity for a hearing only if the Secretary finds this emergency action necessary to prevent substantial harm to Federal interests.

(e) The Secretary's execution of an agreement does not indicate acceptance of any current or past standards or procedures used by the agency.

(f) All the agreements are subject to subsequent changes in the Act or regulations.

(20 U.S.C. 1072, 1078, 1078-1, 1078-2, 1082, 1087, 1087-1)

§ 683.31 Basic PLUS program agreement.

(a) *General.* (1) The basic agreement is required for all participation by a guarantee agency in the PLUS program. In this agreement, the guarantee agency assures the Secretary that its program meets the requirements of paragraph (b) of this section and agrees to maintain the administrative and fiscal standards of paragraph (c) of this section.

(2) The basic agreement shall contain other provisions and be supported by any material required by the Secretary.

(b) *Program requirements.* The guarantee agency ensures, through its policies and the requirements that it imposes on participating lenders, schools, parents, and students, that its program meets the requirements of this paragraph.

(1) *Aggregate loan limits.* The aggregate insured unpaid principal amount for all PLUS loans made to a borrower may not exceed—

(i) $12,500, including any amounts borrowed under the GSLP, in the case of an independent undergraduate student; or

(ii) $15,000, in the case of a graduate or professional student or a parent borrower on behalf of each eligible student.

(2) *Annual amounts.* (i) The maximum loan amount authorized for any one academic year must be at least $1,000, but may not exceed

(A) $2,500, including any amounts borrowed under the GSLP for the same academic year or its equivalent, in the case of an independent undergraduate student; or

(B) $3,000, in the case of a graduate or professional student or a parent borrower on behalf of each eligible student.

(ii) If the program insures loans to an eligible half-time student borrower or a parent borrower on behalf of an eligible half-time student, the loan maximum must be at least $500 for such borrower for each half-time student in any academic year.

(iii) A guarantee agency does not violate paragraphs (b)(2) (i) or (ii) of this section if it makes the maximum loan amounts listed in those paragraphs applicable to either of the following periods:

(A) A period that does not exceed 12 months; or

(B) A period in which the student on whose behalf the loan is made earns the credits required by the student's school to advance in academic standing, as normally measured on an academic year basis (for example, from freshman to sophomore).

(iv) In no case may the amount of a loan exceed the student's estimated cost of attendance less estimated financial assistance.

(3) *Duration of borrower eligibility.* A parent is eligible to borrow funds on behalf of a dependent undergraduate student in any year of study at a participating school. A graduate or professional student and an independent undergraduate student are eligible to borrow funds in any year of study at a participating school.

(4) *Borrower responsibilities.* (i) The borrower shall promptly notify the lender of any change of his or her name or address.

(ii) The borrower shall give the lender, as part of the loan application process—

(A) The statement, described in § 683.12, that the loan will be used for the cost of the student's attendance;

(B) Information that provides a basis for determining that the borrower is eligible;

(C) Information concerning the borrower's outstanding PLUS, GSLP and NDSL loans and, if the borrower is a parent, information on the outstanding PLUS, GSLP and NDSL loans of the student on whose behalf the parent is borrowing;

(D) A statement from the student which authorizes the school to release information contained in the student's file relevant to the student's eligibility to borrow or to have the parent borrow on his or her behalf (e.g., the student's enrollment status, financial assistance and employment records).

(E) A statement from the student which authorizes the school to return any refund attributable to the PLUS loan to the lender; and

(F) Information from the school that provides a basis for determining that the student qualifies as an eligible student and the maximum amount that may be borrowed by or on behalf of the student.

(5) *Disbursement requirements.* (i) The lender shall disburse the loan funds by means of a check made payable to the borrower or, if authorized by the borrower in writing, jointly to the borrower and the school named on the loan application. The check must require the personal endorsement of the borrower. For this purpose, a check is a draft drawn on a bank and payable on demand, and deposit of the check by the borrower in his or her own account at a bank or other financial institution constitutes endorsement.

(ii) The borrower must personally endorse the check and may not authorize anyone else to endorse it on his or her behalf.

(iii) Neither a lender nor a school may obtain a borrower's power of attorney or other authorization to endorse a check on behalf of a borrower.

(iv) The lender may not disburse loan funds earlier than is reasonably necessary to meet the student's cost of attendance for the period for which the loan is intended.

(6) *School notification requirements.* For each PLUS loan, as a condition of insurance, the school that certified the student's enrollment shall be notified of the insurance, the name of borrower (if the borrower is a parent), the name of the student on whose behalf the loan is made, the amount of the loan, the name of the lender, and the

address of the lender. This notification may be made either—

(i) By the lender or the guarantee agency informing the school of these facts no later than 30 days after the initial disbursement of the loan; or

(ii) By the lender sending all loan checks to the school for delivery to the borrower, specifying in each case the name of the student on whose behalf the loan is made.

(7) *Commencement of repayment.* The borrower's repayment period shall begin on the day the loan is disbursed. The borrower's first payment shall be due within 60 days after the loan is disbursed.

(8) *Length of repayment period.* In general, the lender must allow the borrower at least 5 years but not more than 10 years to repay a loan, calculated from the beginning of the repayment period. There are exceptions, however, to this rule;

(i) If the borrower receives a deferment or has been granted forbearance under procedures approved by the guarantee agency, the period of deferment or forbearance is not counted in the 5- and 10-year periods.

(ii) If the minimum annual repayment required in subdivision (iv) of this paragraph would result in complete repayment of the loan in less than 5 years, the borrower is not entitled to the full 5-year period.

(iii) *Prepayment.* The borrower may prepay the whole or any part of the loan at any time without penalty.

(iv) *Minimum annual payment.* During each year of the repayment period, the borrower's payments to all holders of his or her PLUS and GSLP loans must total at least $600 or the unpaid balance of all the loans including interest, whichever amount is less. There are, however, exceptions to this rule:

(A) If the borrower and lender agree, the amount paid may be less.

(B) If the borrower and his or her spouse have separate PLUS loans, or one or more PLUS loans and one or more GSLP loans, their combined annual payment must meet this requirement. The provisions of subparagraphs (A) and (B) may not result in an extension of the 10-year repayment period maximums, unless forbearance has been granted under procedures approved by the guarantee agency.

(9) *Deferment.* During the repayment period, principal payments are postponed during specified periods and under conditions described in § 683.58. However, during these periods, interest shall accrue and be payable unless the lender capitalizes the interest, if permitted by the guarantee agency.

(10) *Interest.* (i) Exclusive of any insurance premium and unless affected by Section 427A(c)(2) of the Act, a lender may charge a maximum interest rate of 14 percent per year on the unpaid principal balance of a PLUS loan. The unpaid principal balance of a loan may include capitalized interest to the extent authorized by the guarantee agency.

(ii) No payments to reduce interest costs shall be paid by the Secretary on PLUS loans.

(11) *Insurance premiums.* (i) The guarantee agency may charge an insurance premium to the lender on each loan. This insurance premium may be used only to insure loans and to cover costs incurred by the guarantee agency in the administration of its PLUS loan insurance program. The lender may pass this charge on to the borrower. The insurance premium may not be used for incentive payments to lenders.

(ii) *Rate.* The insurance premium may not exceed one percent per year of the unpaid principal balance of the loan, excluding interest or other charges that may have been added to the principal.

(iii) *Refund requirement.* The insurance premium need not be refunded by either the guarantee agency or lender to the borrower, even if the borrower prepays, defaults, dies, becomes totally and permanently disabled or files a bankruptcy petition.

(12) *Insurance liability.* The guarantee agency must insure at least 80 percent of the unpaid principal balance of each loan insured.

(13) *Guarantee agency administration.* In the case of a State loan insurance program, the program shall be administered by a single State agency, or by one or more private nonprofit institutions or organizations under the

supervision of a single State agency. For this purpose, "supervision" includes setting policies and procedures for, and having full responsibility for, the operation of the program.

(14) *Loan assignment.* A loan may be assigned only to—

(i) An eligible lender; or

(ii) The guarantee agency, in the case of a borrower's default, death, total and permanent disability, or filing of a bankruptcy petition. "Assigned" means any kind of transfer, including transfer as security.

(15) *Loan information.* Each eligible lender shall provide thorough and accurate loan information to borrowers as specified in § 683.16. The lender shall enter into an agreement with the Secretary to ensure that it will provide this information.

(c) *Administrative and fiscal standards required of the guarantee agency.*—(1) *Establishment of procedures.* To enter into a basic PLUS agreement, the guarantee agency shall establish administrative and fiscal procedures that the Secretary may require to ensure proper administration of the agency's loan insurance program.

(2) *Dissemination of standards and procedures.* The guarantee agency shall establish and disseminate to concerned parties its standards and procedures for—

(i) School and lender participation in its program;

(ii) Limitation, suspension, or termination of school and lender participation;

(iii) Approval of forbearance;

(iv) Timely filing of default, death, disability, and bankruptcy claims by lenders; and

(v) Due diligence in making and collecting loans.

(3) *Due diligence.* The guarantee agency shall ensure that due diligence, including resort to litigation as appropriate, will be exercised by lenders in making and collecting loans. The guarantee agency also shall exercise due diligence, including resort to litigation as appropriate, in collecting loans on which default claims have been paid. "Due diligence" is defined in § 683.10.

(20 U.S.C. 1078, 1078-2, 1082; 42 U.S.C. 5055(e))

§ 683.32 Death, disability, and bankruptcy payments.

(a) If a borrower dies or becomes totally and permanently disabled, the Secretary cancels the borrower's obligation on a PLUS loan by paying the lender the amount owed. If a borrower files a petition for bankruptcy, the Secretary pays the amount owed. However, if both parents of a student obtained a loan as co-makers, in order for a loan to qualify for these payments the applicable condition must apply to both parents. The Secretary cancels these loans whether the holder of the loan is a lender or the guarantee agency.

(b) The procedures in § 683.63 concerning death, total and permanent disability, and bankruptcy apply to guarantee agency programs with the following modifications:

(1) The references to the Secretary in §§ 683.63(a)(3) and 683.63(c)(2) shall be understood to mean the guarantee agency if the loan is held by a lender.

(2) References to the Federal PLUS program shall be understood to mean the guarantee agency program.

(3) References to the lender shall be understood to mean the guarantee agency if the loan is held by a guarantee agency

(c) No death, disability, or bankruptcy claim may be paid if the loan is not considered insurable by the guarantee agency or if a default claim for that loan previously has been disapproved by the guarantee agency.

(d) *Claim procedures for loans held by a lender*—(1) *Claim submission.* (i) The lender shall submit evidence to the guarantee agency that the borrower has died, has become totally and permanently disabled, or has filed a bankruptcy petition. The agency shall return to the lender any submission that is not accurate and complete.

(ii) After determining that a claim is valid the guarantee agency may pay the lender the amount authorized by paragraph (d)(2) of this section. The Secretary periodically reimburses the guarantee agency for these payments.

(2) *Amount of claim payment.* The Secretary determines the amount of the loss to be paid the lender according to the standards used to determine

claim payments under the Federal PLUS program. These are found in § 683.66 (a) and (b), with the following modifications:

(i) References to Federal PLUS program insurance shall be understood to mean guarantee agency insurance.

(ii) Paragraph (b)(1)(i) of § 683.66 shall be understood to mean the period prescribed by the guarantee agency.

(iii) References to the Secretary shall be understood to mean the guarantee agency in paragraphs (b)(1)(ii) and (iii) of § 683.66.

(e) *Claim procedures for loans held by the guarantee agency.*

(1) The Secretary pays a death, disability, or bankruptcy claim on a loan held by the guarantee agency after payment of a default claim to the lender only if—

(i) The borrower (in the case of comakers, both parents), dies, becomes totally and permanently disabled, or files a bankruptcy petition within 10 years of the date the loan went into repayment, exclusive of periods of deferment or periods of forbearance granted by the lender that extend the 10-year period;

(ii) The guarantee agency has not written off the loan as uncollectible; and

(iii) The guarantee agency exercised due diligence in the collection of the loan until the borrower died, became totally and permanently disabled, or filed a bankruptcy petition.

(2) *Amount of claim payment.* (i) The Secretary pays the guarantee agency the amount owed on the loan, including accrued interest. The Secretary pays interest that accrues for a period of up to 60 days from the date the guarantee agency determines that the borrower is dead or totally and permanently disabled, or has filed a bankruptcy petition until the guarantee agency submits the claim to the Secretary. The amount of the payment is reduced by the amount of any reinsurance claim paid by the Secretary for the loan, less any subsequent reimbursement to the Secretary from amounts collected from or on behalf of the borrower.

(ii) If the guarantee agency receives any payments from or on behalf of the borrower on a loan on which the Secretary paid a bankruptcy claim, the guarantee agency shall submit 100 percent of these payments to the Secretary.

(3) If a loan that the Secretary has paid as a bankruptcy claim under this paragraph is not discharged in bankruptcy it will be treated as a default. The guarantee agency shall pay to the Secretary the difference between the amount received from the Secretary as a bankruptcy claim and the amount it would have received as a default claim. In determining the difference, the guarantee agency shall take into account any payments made by or on behalf of the borrower that the agency would have retained on a default claim but submitted to the Secretary under paragraph (e)(2)(ii) of this section.

(20 U.S.C. 1078-2, 1082, 1087)

§ 683.33 Applicability of GSLP Federal advance funds provisions.

(a) Funds appropriated under Section 422 of the Act may be used for purposes of the PLUS program under the terms and conditions specified in § 682.403 and § 682.404 of the GSLP regulations.

(b) The Secretary considers both PLUS loans and GSLP loans in determining the amount of advance funds an agency is eligible to receive under Section 422(c)(2) of the Act.

(c) A guarantee agency shall include both PLUS loans and GSLP loans in making the calculation required under § 682.404(e)(3) of the GSLP regulations.

(20 U.S.C. 1072, 1078-2, and 1082)

§ 683.34 Federal reinsurance agreement.

(a) The Secretary may enter into a reinsurance agreement with a guarantee agency that has a basic PLUS program agreement. Under a reinsurance agreement, the Secretary will reimburse the guarantee agency for 80 percent of its losses on PLUS loans. This agreement is a prerequisite for the supplemental reinsurance agreement, under which the Secretary reimburses the guarantee agency for up to 100 percent of its losses.

(1) *Definition of losses.* In this section, "losses" means the amount the agency pays a lender for a default claim minus payments made by, or on behalf of, the borrower after the lender's claim is paid and before the Secretary reimburses the agency. Losses may include unpaid principal and accrued interest.

(2) *Exclusion.* Death and disability claims on loans are not covered by the reinsurance agreement. Claims on loans to borrowers who have filed a bankruptcy petition also are not covered. Those claims are paid under § 683.32.

(b) The Secretary will enter into a reinsurance agreement only if the agreement would be consistent with any State laws or regulations, and with agreements between lenders and the guarantee agency, regarding the maintenance of the guarantee agency's reserve fund.

(c) The Secretary may find that there is a Federal interest in other aspects of the guarantee agency's operations and may review those operations in deciding whether to enter into or extend a reinsurance agreement.

(d) In deciding whether to enter into a reinsurance agreement, or, if an agreement has terminated, whether to make a subsequent agreement, the Secretary may consider the adequacy of—

(1) The lenders' and the guarantee agency's efforts to collect defaulted loans; and

(2) The guarantee agency's efforts to provide PLUS loans for all eligible borrowers.

(e) Losses on loans that are covered by a reinsurance agreement and were outstanding when the reinsurance agreement was entered into are covered by the agreement only if the default occurs after that time or, if later, after the effective date of the agreement.

(f) *Terms and conditions.* The agreement must contain terms and conditions that the Secretary finds necessary to promote the purposes of the PLUS program and to protect the United States from unreasonable loss, including the following terms and conditions:

(1) The guarantee agency shall assure the Secretary that, for every reinsurance claim it submits—

(i) The terms of the loan comply with all Federal requirements;

(ii) All reasonable efforts have been made by the lender that submitted the default claim to collect the loan;

(iii) The loan was in default before the lender was paid for the claim; and

(iv) The agency will make all reasonable efforts to collect the loan after the Secretary pays the reinsurance claim.

(2) The Secretary prescribes the documentation required to receive payment, and the manner in which payment is made. The Secretary may subtract amounts owed by the guarantee agency from amounts owed to the guarantee agency.

(3) An amount equal to each reinsurance payment shall be credited promptly by the agency to its reserve fund.

(4) Payments made by the borrower to the guarantee agency on a defaulted loan after the Secretary has paid a reinsurance claim on that loan may be applied first to reduce either the principal or interest owed. The borrower's payments may be applied to other charges, such as late charges or attorney's fees, only after the repayment of all principal and interest. If the borrower's repayment schedule or actual payments result in payments that are too small to pay the interest as it accrues, the guarantee agency shall review the borrower's financial situation at least every six months. If feasible, the agency shall adjust the distribution of each payment between principal and interest so that the principal will be paid within a reasonable time.

(5) The guarantee agency shall pay the Secretary an equitable share of any payment made by or on behalf of a defaulted borrower after the Secretary has reimbursed the agency.

(6) Unless the Secretary approves otherwise, the guarantee agency shall submit the Secretary's equitable share of borrower payments to the Secretary within 60 days of its receipt of the payments.

(7) Except as provided in paragraph (h), there is no other subrogation of

the United States to the rights of the guarantee agency on any loan that is subject to this agreement.

(8) Nothing in a reinsurance agreement shall be construed to keep a lender from granting forbearance to a borrower under published criteria of the guarantee agency.

(g) The "Secretary's equitable share" of borrower payments is defined in Section 428(c)(6) of the Act, and is calculated for a complete fiscal year.

(1) The term "overhead" used in that definition includes space and utilities costs.

(2) By December 31 of the succeeding fiscal year, the guarantee agency must submit to the Secretary, in a manner prescribed by the Secretary, information concerning its total borrower payments received and its total administrative costs of collection of loans and preclaims assistance for default prevention incurred during the fiscal year. If this submission shows that the guarantee agency has not paid all the "Secretary's equitable share" of borrower payments to the Secretary for the fiscal year, the guarantee agency must at that time pay the additional amount due to the Secretary.

(h) To protect the Federal fiscal interest, the Secretary may require the guarantee agency to assign to the Secretary any loan which it holds on which the Secretary has paid a reinsurance claim.

(20 U.S.C. 1078, 1078-2, 1082)

§ 683.35 Supplemental Federal reinsurance.

(a) The Secretary may enter into a supplemental reinsurance agreement annually with a guarantee agency that has a reinsurance agreement and that meets the conditions of this section.

(b) *Amount of supplemental reinsurance payments.* (1) The Secretary reimburses a guarantee agency having supplemental reinsurance for 100 percent of its losses, with the following exceptions:

(i) *When reinsurance claims paid by the Secretary to a guarantee agency for any fiscal year reach 5 percent of the "amount of loans in repayment" at the end of the preceding fiscal year.* In this event, the Secretary's reinsurance liability on a claim subsequently paid for that fiscal year will be 90 percent of the amount of the unpaid principal balance plus accrued interest.

(ii) *When reinsurance claims paid by the Secretary to a guarantee agency for any fiscal year reach 9 percent of the "amount of loans in repayment" at the end of the preceding fiscal year.* In this event, the Secretary's reinsurance liability on a claim subsequently paid for that fiscal year will be 80 percent of the amount of the unpaid principal balance plus accrued interest.

(2) *Exception for a new guarantee agency.* For a guarantee agency that entered into a basic agreement under Section 428(b) of the Act after September 30, 1976, or was not actively carrying on a program covered by such agreement on October 1, 1976, the Secretary pays 100 percent of its losses for five consecutive fiscal years beginning with the first year of its operation. The Secretary monitors programs of this type and, if an agency does not prudently administer its program, the Secretary may determine that it does not continue to qualify for this exception.

(c) *Consolidation of the GSLP and PLUS programs for supplemental reinsurance.* (1) If a guarantee agency enters into a supplemental reinsurance agreement for both the GSLP and PLUS programs, that agency shall consolidate the two programs for the purpose of:

(i) Calculating the amount of loans in repayment as described in paragraph (d)(2) of this section, and

(ii) Calculating the extent of the Secretary's liability as described in paragraph (b) of this section.

(2) If a guarantee agency that has a reinsurance agreement for PLUS loans and GSLP loans under § 683.34 enters into a supplemental reinsurance agreement for one but not both of the GSLP and PLUS programs, the guarantee agency shall not consolidate the two programs, but must continue to maintain records on reinsurance separately for each program to enable the Secretary to determine:

(i) The rate of reimbursement to be paid on reinsurance claims under each program, and

(ii) The Secretary's equitable share of collections received after payment of a reinsurance claim under each program.

(d) *Definitions.* (1) "Losses" is defined in § 683.34(a)(1).

(2) For purposes of this section, the "amount of loans in repayment" means the original principal amount of all loans subject to a supplemental reinsurance agreement insured by the agency minus—

(i) The original principal amount of loans on which—

(A) Under the GSLP, the borrower has not yet reached the repayment period;

(B) Payment in full by the borrower has been made; or

(C) The borrower was in deferment status at the time repayment of principal was scheduled to begin, and remains in deferment status; and

(ii) The amount paid by the agency for insurance claims on loans.

(e) *Program requirements.* To enter into a supplemental reinsurance agreement, a guarantee agency program must meet the following conditions:

(1) *Annual amounts.* The maximum annual amount, attributable to one or more PLUS loans, that the agency shall insure for or on behalf of an eligible student who is carrying at least a half-time workload for an academic year or its equivalent must be—

(i) $2,500, including any amounts borrowed under the GSLP, in the case of an independent undergraduate student;

(ii) $3,000, in the case of a graduate or professional student; and

(iii) At least $2,500 but not more than $3,000, in the case of a parent borrower on behalf of each eligible student.

(2) *Aggregate loan limits.* The agency shall insure a maximum aggregate unpaid principal amount of:

(i) $12,500, including any amounts borrowed under the GSLP, in the case of an independent undergraduate student;

(ii) $15,000, in the case of a graduate or professional student; and

(iii) At least $12,500 but not more than $15,000, in the case of a parent borrower on behalf of each eligible student.

(3) *Extent of insurance.* The agency shall insure 100 percent of the unpaid principal of loans made by lenders under its program.

(4) *School eligibility.* Except in the case of correspondence schools, the agency's eligibility criteria for schools may not be more stringent than those of the Federal PLUS program. However, the agency may exclude a school if—

(i) The school's eligibility is limited, suspended, or terminated by the Secretary under 34 CFR Part 668, or by the agency under comparable standards and procedures; or

(ii) There is a State constitutional prohibition affecting a school's eligibility.

(5) *Out-of-State schools.* The agency shall insure loans made to borrowers who are legal residents of the State where the agency operates, but who attend out-of-State schools or, in the case of parent borrowers, are legal residents of the State where the agency operates, but are borrowing on behalf of students attending out-of-State schools. In insuring these loans, the agency shall not impose any restrictions not applicable to borrowers who are legal residents of the State who attend in-State schools or to parent borrowers who are legal residents of the State and are borrowing for students attending in-State schools.

(6) *School lender provisions.* (i) The agency shall provide that a school may be a lender under reasonable criteria unless—

(A) The school's lending eligibility has been limited, suspended or terminated by the Secretary under § 683.90 or Subpart F or by the agency under comparable criteria and procedures; or

(B) There is a State constitutional prohibition affecting the school's lending eligibility.

(ii) The agency may not insure loans made by school lenders that are not located in the geographic area that the agency serves.

(7) *Reports.* The agency shall agree to report to the Secretary by July 1 of each year regarding—

(i) Its school lender eligibility criteria;

(ii) Its procedures for the limitation, suspension, and termination of school lenders;

(iii) A list of all schools that applied for lender eligibility in the preceding 12 months, and a summary of the actions taken on the applications; and

(iv) A list of all eligible school lenders under the agency's program.

(f) *Terms and conditions.* The supplemental reinsurance agreement will contain, at a minimum, the following terms and conditions, in addition to other provisions of the basic agreement or the reinsurance agreement that the Secretary includes:

(1) *Adherence to qualifying standards.* The agency shall assure that the program requirements of paragraph (e) of this section are continuously met.

(2) Reports and records. The agency shall make reports and keep records that the Secretary reasonably requires. It shall give the Secretary access to those records to verify their correctness.

(3) *Application of payments.* If a borrower makes payments on a loan after the Secretary has paid a reinsurance claim on that loan, the agency shall return to the Secretary an equitable share of the payments. The "Secretary's equitable share" is defined in Section 428(c)(6) of the Act and is calculated for a complete fiscal year.

(i) The term "overhead" used in that definition includes space and utilities costs.

(ii) By December 31 of the succeeding fiscal year, the guarantee agency must submit to the Secretary, in a manner prescribed by the Secretary, information concerning its total borrower payments received and its total administrative costs of collection of loans and preclaim assistance for default prevention incurred during the fiscal year. If this submission shows that the guarantee agency has not paid all of the "Secretary's equitable share" of borrower payments to the Secretary for the fiscal year, the guarantee agency must at that time pay the additional amount due to the Secretary.

(4) An agreement is renewed only if the agency's program complies with all the terms of the agreement and all pertinent provisions of these regulations.

(5) Before the Secretary pays a supplemental reinsurance claim, the guarantee agency must give the Secretary a statement of its "amount of loans in repayment" at the end of the preceding fiscal year. The method for determining this amount is given in paragraph (d)(2) of this section.

(20 U.S.C. 1078, 1078-1, 1078-2)

§ 683.36 Administrative cost allowances for guarantee agencies.

(a) *General.* To the extent that funds are appropriated by Congress in any fiscal year for this purpose, the Secretary may make payments to a guarantee agency having a basic PLUS program agreement for the primary and secondary administrative cost allowances.

(1) *Total payments.* Payments of allowances to a guarantee agency for any fiscal year made under paragraphs (b) and (c) of this section do not exceed, for each allowance, one-half of 1 percent of the total principal amount of loans for which the guarantee agency issued insurance during that fiscal year.

(i) If the amount appropriated for any fiscal year is insufficient to pay all guarantee agencies the full amounts for which they would otherwise be eligible, payments to all agencies are proportionately reduced.

(ii) In the event of such an insufficiency, if additional funds become available for making payments for that fiscal year, additional payments are distributed on the same basis as they were reduced.

(2) *Application.* The guarantee agency shall submit an application for each allowance to the Secretary by January 1 of the fiscal year for which it is requesting the allowance. The application must contain information and assurances that the Secretary reasonably requires, including the following—

(i) Information showing the agency's ability to collect loans and provide preclaim assistance to its lenders, including descriptions of staff size and activities in these areas;

(ii) An estimate of the costs that will be eligible for payments under this section (categorized by the types of costs listed in paragraph (a)(3)(i) of this section);

(iii) Assurances that sufficient administrative and fiscal procedures, including an annual independent audit or, if a State guarantee agency is subject to State audit procedures not under its control, a biennial independent audit, will be used to ensure that the administrative allowances are used in accordance with the provisions of this section, and that the audit report will be made available to the Secretary on request;

(iv) Assurances that the guarantee agency will furnish any further information, including estimates, that the Secretary may reasonably require to carry out the provisions of this section;

(v) For the primary allowance application only, an estimate of the total amount on new loan volume expected to be insured during the fiscal year; and

(vi) For the secondary allowance only, assurance that the agency's program—

(A) Meets all the requirements for a supplemental reinsurance agreement;

(B) Insures loans for independent undergraduate students and graduate or professional students who are not legal residents of the State, but who are attending participating schools in the State other than correspondence schools, without imposing any restrictions not imposed on legal residents of the State who attend schools in the State other than correspondence schools; and

(C) Insures loans to parent borrowers who are not legal residents of the State, but who are borrowing for students attending participating schools in the State (other than correspondence schools), without imposing any restrictions not imposed on borrowers who are legal residents of the State and who borrow for students attending schools in the State other than correspondence schools.

(3) *Definitions.* (i) The terms "administrative costs of promotion of commercial lender participation," "administrative costs of collection of loans," and "administrative costs of preclaims assistance for default prevention," as used in paragraphs (b) and (c) of this section, are defined in Section 428(f)(3) of the Act. The term "administrative costs of monitoring the enrollment status of students and the repayment status of borrowers," as used in paragraphs (b) and (c) of this section, has the same meaning as "administrative costs of monitoring the enrollment and repayment status of students," as defined in Section 428(f)(3) of the Act, except that the reference to repayment status in cases where the borrower is a parent, shall be understood to refer to that of the parent borrowers.

(ii) The term "overhead costs" used in those definitions includes space and utilities costs.

(b) *Primary allowance*—(1) *Basic qualification.* The agency must have a basic PLUS program agreement.

(2) *Use of funds.* The primary allowance must be used by the agency only to meet administrative costs of promotion of commercial lender participation, administrative costs of collection of loans, administrative costs of preclaim assistance for default prevention, administrative costs of monitoring the enrollment status of students and the repayment status of borrowers, and other administrative costs related to the PLUS program of the guarantee agency. Also, this allowance must be used to meet only administrative costs not taken into account by the agency under the formula for determining the "Secretary's equitable share" of borrower payments made after the Secretary has paid reinsurance claims to the agency.

(c) *Secondary allowance.* (1) Payment of the secondary allowance is made in addition to payment of the primary allowance.

(2) *Basic qualification.* The agency must have a reinsurance agreement for PLUS loans.

(3) *Use of funds.* The secondary allowance must be used by the agency only to meet administrative costs of promotion of commercial lender participation, administrative costs of collection of loans, administrative costs of preclaim assistance for default prevention, administrative costs of moni-

toring the enrollment status of students and the repayment status of borrowers, and other administrative costs related to the program of the guarantee agency. Also, this allowance must be used to meet only administrative costs not taken into account by the agency under the formula for determining the "Secretary's equitable share" of borrower payments made after the Secretary has paid reinsurance claims to the agency.

(4) The Secretary's payment of the secondary allowance establishes an agreement between the Secretary and the guarantee agency with respect to the assurances contained in the application.

(20 U.S.C. 1078, 1078-1, 1078-2, 1082)

§ 683.37 Records, reports, and inspection requirements for guarantee agency programs.

(a) *Records.* (1) A guarantee agency shall keep the records specifically required by this section and the records necessary to make reports required by this subpart. The guarantee agency shall retain records for each loan for at least five years after the loan is paid in full or has been determined to be uncollectible. For the purposes of this section, the term "paid in full" includes loans paid by the Secretary on account of the borrower's death, permanent and total disability, or bankruptcy. These records must be as complete and accurate as is necessary to document fully the agency's reports.

(2) The guarantee agency shall require participating lenders to keep records on guaranteed loans as prescribed by the Secretary. These shall include complete and accurate records of each loan account, showing each transaction and affording ready identification of the borrower's status. A lender shall retain records of a loan for at least five years from the date the loan has been paid in full by the borrower or the lender has been reimbursed for a loss on the loan by the guarantee agency. The Secretary may, in particular cases, require the retention of records beyond this 5-year minimum period.

(3) Guarantee agencies and lenders may store records in microfilm or computer format. However, the lender or guarantee agency holding a promissory note shall retain the actual note until the loan is paid in full or determined by the guarantee agency to be uncollectible. When repayment is complete, the lender or guarantee agency shall return the actual note to the borrower and retain a copy for the prescribed period. If a loan is written off as uncollectible, the original note need not be retained, but a copy must be retained for the prescribed period.

(b) *Reports.* (1) The agency shall submit reports to the Secretary upon request concerning the status of its reserve funds, and the operations of its loan insurance program.

(2) The agency shall submit to the Secretary, at least annually, a report of the total insured loan volume and default volume and rate on all loans insured after December 31, 1980, for each of the following categories of lenders:

(A) Schools.

(B) State or private nonprofit direct lenders.

(C) Commercial financial institutions (banks, savings and loan associations, or credit unions).

(D) All other types of institutions or agencies. Loan volume and default data shall be reported according to the category of original lender, not subsequent holder. If a guarantee agency operates in more than one State, a separate report must be submitted for each State of operation.

(3) The agency shall submit to the Secretary its application forms, promissory notes, regulations, and statements of procedures and standards—including standards for due diligence and timely claims filing—as well as other materials that substantially affect the operation of the agency's program, whenever requested to do so by the Secretary and whenever changes or new materials are proposed. The Secretary reviews these materials for administrative and fiscal sufficiency and for conformance to statutory and regulatory provisions.

(4) Lenders shall submit to the agency the information necessary for the agency to complete its reports to the Secretary.

(5) The agency shall submit, or require its lenders to submit, upon the

Secretary's request, information the Secretary needs to determine the amount of special allowance to be paid on the agency's insured loans.

(c) *Inspections.* (1) A guarantee agency shall give the Secretary, or other agencies of the government designated by the Secretary, access to its records in order to assure the accuracy of the reports described in paragraph (b) of this section.

(2) A guarantee agency shall provide in its agreement with a lender or in its statements of procedures that the lender shall give the Secretary, or other agencies of the government designated by the Secretary, and the agency access to the lender's records in order to assure the accuracy of the reports required under paragraphs (b) (4) and (5) of this section.

(20 U.S.C. 1072, 1078, 1078-2, 1082)

Subpart D—Federal PLUS Program

§ 683.50 Circumstances under which loans may be insured.

The Secretary may insure PLUS loans made by lenders located in a State in the following curcumstances:

(a) Where no guarantee agency is insuring GSLP loans in that State;

(b) Where a guarantee agency is insuring GSLP loans in that State and is not prohibited by State law from authorizing PLUS loan insurance, but is not insuring PLUS loans; or

(c) Where a guarantee agency is insuring GSLP loans in that State, but State law enacted prior to January 1, 1981 prohibits any guarantee agency from insuring PLUS loans in that State, after 120 days following the adjournment of the first regular session of the State legislature which convenes after January 1, 1981.

(20 U.S.C. 1078-2, 1082)

§ 683.51 Extent of Federal insurance.

(a) *General rule.* Except as provided in paragraph (b) of this section, the Secretary's insurance liability on any Federal PLUS loan is 100 percent of the unpaid principal balance and accrued interest.

(b) *Special provisions for State lenders.* For purposes of this calculation, State lenders may consolidate FISLP and PLUS loans.

(1) Except as described in subparagraph (2), of this paragraph, the Secretary's insurance liability is less than 100 percent under the following conditions:

(i) *When the total of default claims for the FISLP and PLUS program paid by the Secretary to a State lender for any fiscal year reaches 5 percent of the amount of the FISLP and PLUS loans in repayment at the end of the preceding fiscal year.* In this event, the Secretary's insurance liability on a claim subsequently paid for that fiscal year will be 90 percent of the amount of the unpaid principal balance plus accrued interest.

(ii) *When the total of default claims for the FISLP and PLUS program paid by the Secretary to a State lender for any fiscal year reaches 9 percent of the amount of the FISLP and PLUS loans in repayment at the end of the preceding fiscal year.* In this event, the Secretary's insurance liability on a claim subsequently paid for that fiscal year will be 80 percent of the amount of the unpaid principal balance plus accrued interest.

(2) The potential reduction in insurance liability does not apply to a State lender during the first Federal fiscal year of its operation as a lender in the FISLP or PLUS program and during each of the four succeeding fiscal years. If the lender has not previously participated in the FISLP, this 5-year period begins to run with the first Federal fiscal year of the State lender's operation as a lender under the Federal PLUS program.

(3) For purposes of this section, the "amount of loans in repayment" means the original principal amount of both FISLP and PLUS loans insured by the Secretary minus—

(i) The original principal amount of loans on which—

(A) Under the FISLP, the borrower has not yet reached the repayment period;

(B) Payment in full by the borrower has been made; or

(C) The borrower was in deferment status at the time repayment of principal was scheduled to begin, and remains in deferment status; and

(ii) The amount paid by the Secretary for insurance claims on loans.

(4) For purposes of this paragraph, payments by the Secretary on a loan that the original lender assigned to a subsequent holder are considered payments made to the original lender.

(20 U.S.C. 1075, 1078-2, 1082)

§ 683.52 Application to become a lender under the Federal PLUS program.

(a) *General.* To participate in the Federal PLUS program, a lender that does not hold a Federal contract of insurance must submit an application to the Secretary for an insurance contract. The Secretary responds to the lender's request to participate in the Federal PLUS program within 30 days of receipt of an application.

(b) *Criteria for evaluating an application.* In determining whether to enter into an insurance contract with an applicant and what the terms of that contract should be, the Secretary may consider the following criteria:

(1) Whether the applicant is capable of complying with these regulations as they apply to lenders.

(2) Whether the applicant is capable of implementing adequate procedures for making and collecting loans.

(3) If the applicant has had prior experience with a similar Federal, State or private nonprofit student or parent loan program, the amount and rate of loans that currently are delinquent or in default under that program.

(4) The financial resources of the applicant.

(5) In the case of a school that is seeking approval as a lender, its accreditation status, with the preferred condition being accredited.

(c) The Secretary requires an applicant to submit sufficient materials with its application so that the Secretary may evaluate it fairly in accordance with these criteria.

(d) *Denial of participation.* (1) If the Secretary decides not to approve the application for an insurance contract, the reason for the decision is included in the Secretary's response.

(2) The Secretary provides an opportunity for the lender to meet with a designated Department of Education official if the lender wishes to appeal the Secretary's decision.

(3) However, the Secretary need not explain the reasons for the denial, or grant the lender an opportunity to appeal, if the lender submits its application within 6 months of a previous denial.

(20 U.S.C. 1078-2, 1082.)

§ 683.53 The lender insurance contract.

(a) *Approval of insurance contract.* (1) If the Secretary approves a lender's application to be a Federal PLUS lender, the Secretary and the lender sign an insurance contract. No loan is insured unless covered by an insurance contract.

(2) In general, under an insurance contract the lender agrees to comply with all laws, regulations and other requirements applicable to its participation as a lender in the Federal PLUS program, and the Secretary agrees to insure each eligible Federal PLUS loan held by the lender against the borrower's default, death, total and permanent disability, or bankruptcy.

(3) The Secretary's insurance liability is the amount of unpaid principal and interest, except for certain loans made by a State lender as provided in § 683.51(b).

(4) The contract may contain a limit on the duration of the contract and the number or amount of Federal PLUS loans a lender may make or hold.

(b)(1) Except as otherwise approved by the Secretary, an insurance contract with a school lender shall limit the PLUS loans made by that school lender which will be covered by Federal loan insurance to those made to students or to parents borrowing on behalf of students—

(i) Who are in attendance at that school; or

(ii) Who are in attendance at other schools under the same ownership; or

(iii) Who are employees, or whose parents are employees, of that school lender or other schools under the same ownership, under circumstances the Secretary considers appropriate for insurance.

(2) A limit imposed under paragraph (a)(4) of this section on a school lender which makes loans to students or parents of students in attendance at

other schools under the same ownership, or to employees or parents or dependents of employees of those other schools, may be imposed on a school-by-school basis.

(20 U.S.C. 1078-2, 1079, 1082)

§ 683.54 Issuance of Federal loan insurance.

(a) *Application for insurance.* A lender having an insurance contract shall submit an application to the Secretary for Federal loan insurance on each intended PLUS loan that the lender determines to be eligible for insurance. The application shall be on a form prescribed by the Secretary. The Secretary notifies the lender whether the loan is or is not insurable and the amount of the insurance. No disbursement on a loan made prior to the Secretary's approval of that loan is insurable.

(b) *Conditions of insurance coverage.* The Secretary issues insurance on a PLUS loan in reliance on the implied representations of the lender that all requirements for the initial insurability of the loan have been met. As described in § 683.66, the continuance of the insurance is conditioned upon compliance by all holders of the loan with these regulations. The delegation of functions to a servicing agency or party does not relieve the lender of its responsibilities in the making and collection of a Federal PLUS loan.

(20 U.S.C. 1078-2, 1079, 1082)

§ 683.55 Limitations on maximum loan amounts.

(a) *Annual amounts.* The Secretary does not insure a loan that would exceed the student's estimated cost of attendance for the academic period for which the loan is intended less estimated financial assistance awarded for that period. The maximum annual loan amount, attributable to one or more PLUS loans, that the Secretary insures for or on behalf of an eligible student who is carrying at least a half-time workload for any academic year or its equivalent, does not exceed:

(1) $2,500, including any amounts borrowed under the GSLP, in the case of an independent undergraduate student;

(2) $3,000, in the case of a graduate or professional student; and

(3) $3,000, in the case of a parent borrower on behalf of each eligible student.

(b) *Aggregate loan limits.* The Secretary insures a maximum aggregate unpaid principal amount of:

(1) $12,500, including any amounts borrowed under the GSLP, in the case of an independent undergraduate student;

(2) $15,000, in the case of a graduate or professional student; and

(3) $15,000, in the case of a parent borrower on behalf of each eligible student.

(c) *Limitation on a loan to or on behalf of a student enrolled in a correspondence course.* The Secretary does not insure a loan to or on behalf of a student enrolled in a correspondence course in an amount which exceeds tuition and fees and, if required, books and supplies, and travel and room and board costs incurred specifically in fulfilling a required period of residential training.

(20 U.S.C. 1075, 1078-2, 1079, 1082, 1089)

§ 683.56 Insurance premiums.

(a) *General.* The Secretary charges the lender an insurance premium for each loan that is insured.

(b) *Rate.* The rate of the insurance premium is one-fourth of one percent per year of the loan principal, excluding interest or other charges that may have been added to the principal.

(c) *How the insurance premium is calculated.* (1) The insurance premium is calculated by:

(i) Using the actual repayment period as a base;

(ii) Amortizing the loan in monthly installments over the repayment period;

(iii) Determining one-fourth of one percent of each monthly declining balance; and

(iv) Totaling the monthly amounts derived in subdivision (iii) of this subparagraph.

(d) *Collection from lenders.* (1) The Secretary requires the lender to pay the insurance premium when the disbursement is reported. At the Secretary's discretion, the Secretary may collect the insurance premium by offsetting it against amounts payable by the Secretary to the lender.

(2) Insurance coverage on a Federal PLUS loan ceases to be effective when the lender fails to pay the insurance premium within 60 days of the date payment is due. The Secretary may, however, excuse late payment of an insurance premium, and reinstate the insurance on a loan, if the Secretary is satisfied that the loan is not in default and the borrower is not delinquent in making installment payments.

(e) *Collection from borrowers.* The lender may pass along the cost of the insurance premium to the borrower in the form of a one-time charge. The lender may bill the borrower for the insurance premium or may deduct the amount from the loan proceeds. The lender must clearly identify to the borrower the amount of insurance premium and the method of calculation.

(f) *Refund provisions.* The premium is not refundable by the Secretary, and need not be refunded by the lender to the borrower, even if the borrower prepays, defaults, dies, becomes totally and permanently disabled, or files a petition for bankruptcy.

(20 U.S.C. 1077, 1078-2, 1079, 1082)

§ 683.57 Repayment of loans.

(a) *Commencement of repayment.* (1) The repayment period begins on the day the loan is disbursed, and interest begins to accrue on that date. The first payment is due within 60 days after the date of disbursement.

(2) If a condition that justifies a deferment of repayment exists when the loan is disbursed, both the deferment and the accrual of interest commence on that date. Repayment of principal begins following the expiration of the deferment period or the post-deferment grace period (as defined in § 683.10).

(b) *Length of repayment period.* In general, a lender shall allow a borrower at least 5 years, but not more than 10 years, to repay a loan, calculated from the beginning of the repayment period. There are exceptions, however, to this rule:

(1) If the borrower receives an authorized deferment or has been granted forbearance, as described in § 683.61(c), the periods of deferment or forbearance are generally excluded from determinations of the 5- and 10-year periods. However, the 5- and 10-year periods include each post-deferment grace period (as defined in § 683.10) following each authorized deferment.

(2) If the minimum annual repayment required in paragraph (d) of this section would result in complete repayment of the loan in less than 5 years, the borrower is not entitled to the full 5-year period.

(c) *Prepayment.* The borrower may prepay the whole or any part of a loan at any time without penalty.

(d) *Minimum annual payment.* (1) During each year of the repayment period, a borrower's total payments to all holders of his or her PLUS loans and GSLP loans must total at least $600 or the unpaid balance of all loans, including interest, whichever amount is less. There are, however, two exceptions to this rule:

(i) If the borrower and the lender agree, the amount paid may be less.

(ii) If the borrower and his or her spouse have separate PLUS loans, or one or more PLUS loans and one or more GSLP loans, their combined annual payment must meet this requirement.

(2) The provisions of subparagraphs (1)(i) and (ii) may not result in an extension of the 10-year repayment period maximum, unless forbearance has been approved under § 683.61(c).

(e) *Student failure to enroll on at least a half-time basis.* If a lender disburses a PLUS loan and later learns that the borrower or student on whose behalf the parent borrowed has not been or will not be enrolled on at least a half-time basis at a participating school during the period for which the loan was intended, the lender shall notify the borrower that full payment of the loan is immediately due. If the lender determines such action is necessary to prevent default, the lender may allow the borrower to repay the loan in installments. However, the borrower is not entitled to periods of deferment under § 683.58.

(f) *Repayment schedule.* The repayment schedule may provide for substantially equal installment payments or for installment payments that increase in amount over the repayment period. If a graduated repayment schedule is established, it may not provide for any single installment that is more than 3 times greater than any other installment.

(g) *Supplemental repayment agreement.* (1) For a loan made by a school lender, the lender and the borrower may enter into an agreement supplementing the regular repayment schedule under paragraph (f) of this section. Under a supplemental repayment agreement, the lender agrees that the borrower is deemed to meet the terms of the regular repayment schedule as long as the borrower makes payments in accordance with a separate schedule. However, the regular schedule must provide for equal installments.

(2) The purpose of a supplemental repayment agreement is to extend the 10-year repayment period maximum and to permit a lender to offer a borrower a repayment schedule based on other than equal or graduated payments. For example, a supplemental repayment agreement may base the amount of the borrower's payment on the borrower's income.

(3) The agreement and separate schedule must contain terms that the Secretary believes do not unduly burden the borrower and do not subject the Secretary to undue liability. A lender and borrower may not enter into a supplemental repayment agreement unless the lender has obtained the Secretary's prior approval of its terms.

(4) The borrower may not insist upon the establishment of a supplemental repayment agreement.

(5) A lender may assign a loan subject to a supplemental repayment agreement only if the buyer agrees to accept the loan subject to the terms of the supplemental agreement.

(6) For purposes of the special allowance, and the determination of the amount of loss on an insurance claim, the unpaid principal balance of the loan is based on the regular repayment agreement.

(20 U.S.C. 1077, 1078, 1078-2, 1079, 1082.)

§ 683.58 Deferment.

(a) *Borrower eligibility.* (1) A borrower is entitled to have periodic installment payments of principal deferred during authorized periods. For a loan made prior to October 1, 1981, the borrower is also entitled to have periodic installment payments of principal deferred during the post-deferment grace period, which commences after the completion of each deferment period or combination of such periods. Except as provided in paragraphs (e)(4) and (f)(4) of this section, a period of authorized deferment begins when the condition entitling a borrower to deferment first exists. Interest accrues and is payable by the borrower during the deferment and (if applicable) the post-deferment grace period. The borrower shall provide to the lender all documentation required to establish eligibility for a specific type of deferment.

(2) A deferment cannot be denied by a lender when the borrower meets the eligibility criteria, even though the borrower may be delinquent, but not in default, in making required installment payments. The 120- or 180-day period required to establish a default does not run during the deferment and post-deferment grace periods. When the deferment or, if applicable, the post-deferment grace period expires, a borrower resumes any delinquent status that existed when the deferment period began.

(3) A borrower whose loan is in default is not eligible for a deferment unless the borrower has made satisfactory arrangements with the lender to bring the account current.

(4) If both parents of a student have obtained a loan as co-makers, both parents must be eligible for a deferment in order for payments of principal to be deferred.

(b) *Authorized deferments.* Deferment is authorized during periods when a borrower is engaged in at least one of the following activities:

(1)(i) Full-time study at a participating school, unless the borrower is not a national of the United States and is pursuing a course of study at a school not located in a State; or

(ii) Full-time study at a school which meets the definition of an institution of higher education or a vocational school and is operated by an agency of the Federal Government (e.g., the service academies), unless the borrower is not a national of the United States and is pursuing a course of study at a school not located in a State.

(2) Study under an eligible graduate fellowship program, as described in paragraph (c) of this section.

(3) Up to 3 years of active duty service in the United States Armed Forces or of service as an officer in the Commissioned Corps of the United States Public Health Service.

(4) Up to 3 years of volunteer service under the Peace Corps Act.

(5) Up to 3 years of service as a full-time volunteer under Title I of the Domestic Volunteer Service Act of 1973 (ACTION programs).

(6) Up to 3 years of full-time volunteer service which the Secretary has determined is comparable to service referred to in paragraphs (b)(4) and (b)(5) of this section for a tax-exempt organization, as described in paragraph (d) of this section.

(7) Conscientiously seeking but unable to find full-time employment in the United States over a single period of up to 12 months, as described in paragraph (e) of this section.

(8) Pursuing a course of study under a rehabilitation training program for disabled individuals, as described in paragraph (f) of this section.

(9) Up to 2 years of service as an intern, as described in paragraph (g) of this section.

(10) Up to 3 years during which the borrower is temporarily totally disabled, as described in paragraph (h) of this section, or during which the borrower is unable to secure employment because he or she is caring for a spouse who is temporarily totally disabled, as described in paragraph (i) of this section.

(c) *Graduate fellowship deferment.* To qualify for a deferment for study under a graduate fellowship program, a borrower shall provide the lender with a statement from an official of the borrower's fellowship program certifying that—

(1) The fellowship program—

(i) Provides sufficient financial support to graduate fellows to allow for full-time study for at least 6 months;

(ii) Requires, prior to the award of that financial support, a written statement from each applicant which explains the applicant's objectives; and

(iii) Requires a graduate fellow to submit periodic reports, projects, or other evidence of the graduate fellow's progress; and

(2) The borrower—

(i) Holds at least a baccalaureate degree conferred by an institution of higher education;

(ii) Is engaged in full-time study, that may be independent of an educational or cultural institution, in an academic or professional subject area for which the borrower has shown an interest and ability; and

(iii) Has been recommended by an institution of higher education for acceptance into the graduate fellowship program.

(d) *Full-time volunteer service for a tax-exempt organization deferment.* To qualify for a deferment for full-time volunteer service for a tax-exempt organization comparable to volunteer service in the Peace Corps or full-time volunteer service in a program administered by the ACTION agency, a borrower shall provide the lender with a statement from an official of the borrower's volunteer program certifying that—

(1) The borrower serves in an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1954;

(2) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions;

(3) The borrower's compensation does not exceed the compensation received by a full-time volunteer in the Peace Corps or in a program administered by the ACTION agency. Compensation includes a subsistence allowance, necessary travel expenses and stipends;

(4) The borrower, as part of his or her duties, does not give religious in-

struction, conduct worship services, engage in religious proselytizing, or engage in fundraising to support religious activities; and

(5) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(e)(1) *Basic eligibility for an unemployment deferment.* (i) For purposes of this section, full-time employment involves at least 30 hours of work per week and is expected to last at least 3 months.

(ii) A borrower is entitled to the deferment whether or not he or she has been previously employed. If previously employed, the borrower is entitled to a deferment regardless of the circumstances under which the employment ended.

(iii) An unemployment deferment is not justified if the borrower has sought employment only in kinds of positions or at salary and responsibility levels for which he or she feels qualified by virtue of education or previous experience.

(2) *Submission of request.* To receive an unemployment deferment, a borrower shall submit a request for the deferment in writing to the holder of the loan. To continue the deferment for more than 6 months, the borrower shall submit a second request by the end of the first 6-month period. Each request must be signed and dated and contain the following:

(i) A statement from the borrower describing his or her conscientious search for full-time employment.

(ii) The borrower's latest permanent home address and, if applicable, the borrower's latest temporary address.

(iii) Certification that the borrower has registered with a public or private employment agency, if one is accessible, specifying its name and address.

(iv) The borrower's agreement to notify the lender promptly when he or she becomes employed full-time.

(3) *Lender's approval or disapproval of request.* (i) The lender must review the borrower's request and notify the borrower of its decision within one month after receipt of the request.

(ii) The lender may rely upon the written statements provided by the borrower, unless the lender has information to the contrary.

(iii) If the lender is satisfied that the borrower has conscientiously searched for full-time employment and otherwise meets the requirements for an unemployment deferment, the lender shall approve the request.

(iv) If the borrower's request does not justify an unemployment deferment, the lender may grant the borrower forbearance if authorized under § 683.61.

(4) *When the unemployment deferment begins.* An unemployment deferment begins—

(i) On the date that the lender approves the request; or

(ii) On a date not in excess of 60 days prior to the lender's approval if the unemployment existed at the earlier date.

(5) *When the unemployment deferment ends.* An unemployment deferment ends on the earliest of—

(i) The date the lender learns that the borrower has become employed full-time;

(ii) One month after the date when a certification of unemployment deferment eligibility is due from the borrower but has not been received; or

(iii) Twelve months after the commencement of the deferment period.

(f) *Rehabilitation training program deferment.* (1) To qualify for this deferment—

(i) The borrower must either be receiving or be scheduled to receive services under a program designed to rehabilitate disabled individuals; and

(ii) The borrower's rehabilitation program must meet the Secretary's criteria for approval.

(2) *Criteria for the Secretary's approval of rehabilitation training programs.* The Secretary approves a rehabilitation training program if the organization providing rehabilitation services to the borrower—

(i) Is licensed, approved, certified or otherwise recognized as providing rehabilitation training to disabled individuals by any of the following agencies—

(A) A State vocational rehabilitation agency;

(B) A State agency for drug abuse treatment;

(C) A State agency for mental health services;

(D) A State agency for alcohol abuse treatment; or

(E) The Veterans Administration; and

(ii) Provides or has agreed to provide that borrower with services for his or her rehabilitation under a rehabilitation plan that is—

(A) Written;

(B) Individualized to meet the borrower's needs;

(C) Specific as to the date on which the services to the borrower are expected to end; and

(D) Structured in a way that requires a substantial commitment by the borrower to his or her rehabilitation. The Secretary considers a substantial commitment by the borrower to be a commitment of time or effort that would normally prevent an individual from engaging in full-time employment either because of the number of hours that he or she must devote to rehabilitation or because of the nature of his or her rehabilitation. For the purpose of this paragraph, full-time employment involves at least 30 hours of work per week.

(3) *Qualification for a rehabilitation training program deferment.* (i) To obtain a rehabilitation training deferment, a borrower shall provide the lender with evidence that he or she qualifies for the deferment, in a form approved by the Secretary. The evidence must include—

(A) A statement from the provider of the rehabilitation services certifying that the borrower either is receiving or is scheduled to receive rehabilitation training services from the provider; and

(B) A statement from an agency described in paragraph (f)(2)(i) of this section certifying that the provider from which the borrower is receiving services or is scheduled to receive services meets the requirements of paragraph (f)(2) of this section with respect to that borrower.

(ii) On receipt of the properly completed request, the lender shall grant the borrower a deferment.

(4) *When the rehabilitation training program deferment begins.* The rehabilitation training deferment begins—

(i) In the case of a borrower who is actually receiving rehabilitation services under an approved program, on the date specified in the borrower's rehabilitation plan as the beginning date for his or her receipt of services through that program;

(ii) In the case of a borrower who is requesting deferment based on being scheduled to receive rehabilitation services under an approved program, on the date that the borrower provides the lender with a properly completed request.

(5) *When the rehabilitation training program deferment ends.* Unless the borrower re-establishes his or her eligibility to continue a deferment by repeating the request procedure described in paragraph (f)(3) of this section, the rehabilitation training program deferment ends on the earliest of the following dates:

(i) In the case of a borrower who was granted deferment based on being scheduled to receive rehabilitation services under an approved program, the date the borrower informs the lender that he or she no longer plans to receive rehabilitation services; or

(ii) In the case of a borrower who was granted deferment based on being scheduled to receive rehabilitation services under an approved program, the date three months from the date the borrower submitted a request for a rehabilitation deferment; or

(iii) The date the borrower ceases rehabilitation training; or

(iv) The date specified in the borrower's rehabilitation plan as the date on which rehabilitation services to the borrower are anticipated to end; or

(v) The date twelve months from the date the borrower begins receiving services.

(g) *Internship deferment.* To qualify for an internship, deferment, a borrower shall provide the lender with evidence that he or she is serving in an eligible internship, after obtaining a baccalaureate or professional degree, which the Secretary has determined is required to receive professional recognition required to begin professional practice or service. The Secretary has determined that medical residency is an example of such an internship.

(h) *Borrower's temporary total disability deferment.* (1) To qualify for this deferment the borrower shall give the lender an affidavit of a qualified physician stating that the borrower is temporarily totally disabled.

(2) For purposes of this section, a borrower who is "temporarily totally disabled" is one who, by reason of injury or illness, cannot be expected to be able to attend school or to be gainfully employed during an extended period of time needed to recover from such an injury or illness.

(i) *Deferment for a borrower whose spouse is temporarily totally disabled.* To qualify for this deferment the borrower shall give the lender—

(1) An affidavit of a qualified physician stating that the borrower's spouse is temporarily totally disabled. For purposes of this section a spouse who is "temporarily totally disabled" is one who, by reason of injury or illness, cannot be expected to be gainfully employed during an extended period of time needed to recover from such injury or illness and who during that period requires continuous nursing or other similar services; and

(2) A statement from the borrower certifying that he or she is unable to secure employment because he or she is providing this care.

(20 U.S.C. 1077, 1078, 1078-2, 1082, 1085; 42 U.S.C. 5055(e))

§ 683.59 Due diligence in making and disbursing a loan.

(a) *General.* (1) The loan-making process includes the processing of necessary forms, the approval of a borrower for a loan, the determination of the loan amount, the explanation to a borrower of the borrower's responsibilities under the loan, the completion by the borrower of the promissory note, and the disbursement of the loan proceeds.

(2) Except as may be authorized by the Secretary, a lender may not delegate its loan-making functions except to a school with whom the lender has an origination relationship. If an origination relationship exists, the lender may rely in good faith upon statements of the borrower and, if the borrower is a parent, the student contained in the loan application, but may not rely upon statements made by the school in the application. A non-school lender which does not have an origination relationship with a school may rely in good faith upon statements of the borrower, the student and the school which are contained in the application. A school lender may rely in good faith upon statements made by the borrower and, if the borrower is a parent, the student in the loan application.

(b) *Processing of forms.* Before making a loan, a lender must, subject to paragraph (a)(2) of this section, determine that all required forms have been accurately completed by the borrower, the student, the school, and the lender. A lender must not ask the borrower to sign any form before all information requested of the borrower on that form has been supplied.

(c) *Approval of borrower and determination of loan amount.* (1) A lender may make a loan only to an eligible borrower. To the extent authorized in paragraph (a)(2), the lender may make its determination as to the eligibility of the borrower based on the information provided on the application by the school, the borrower, and, if the borrower is a parent, the student on whose behalf the loan is intended.

(2) In determining the amount of the loan to be made, within the limitations of § 683.55, the lender should review the data on the student's cost of attendance and estimated financial assistance which is provided on the application form. In no case may the loan amount exceed the student's estimated cost of attendance for the academic period for which the loan is intended less estimated financial assistance.

(d) *Borrower interview.* (1) Before making an initial loan to a borrower, a lender should meet personally with the borrower to ensure that the borrower understands his or her rights and responsibilities under the loan.

(2) In particular, the lender should explain that the loan funds may be applied only toward educational expenses of the student listed on the application.

(e) *Establishing repayment terms.* When establishing repayment terms, the lender should take into consideration the financial obligations and the current and potential income of the borrower. The lender should design a repayment schedule that retires the loan obligation as soon as possible, as permitted under § 683.57(b), without leading to default caused by the borrower's inability to make payments.

(f) *Providing loan information.* By no later than when the note is signed, the lender shall provide the borrower with information, including the repayment schedule, concerning his or her rights and responsibilities under the loan, as set forth in § 683.16.

(g) *Promissory note.* (1) The lender shall obtain from the borrower an executed promissory note for each loan as proof of the borrower's indebtedness.

(2) The Secretary periodically makes an approved promissory note form available to Federal PLUS lenders. A lender may not add any clauses to, or modify any of the provisions of, the most current promissory note provided by the Secretary without the Secretary's prior approval.

(3) The lender must give the borrower a copy of each executed note.

(4) The lender shall retain the original promissory note until the loan is paid in full. Within 30 days of the date the loan has been paid in full, the lender shall give the borrower the original promissory note.

(h) *Security, endorsement and comakers.* (1) A Federal PLUS loan must be made without security.

(2) Except as provided in paragraph (4), a Federal PLUS loan must be made without endorsement or other secondary liability on the note.

(3) A Federal PLUS loan may be made to two eligible parents who agree to be jointly liable for repayment of the loan as co-makers.

(4) A lender may require an endorsement by another person on the borrower's PLUS note only if the borrower is a minor and cannot under applicable State law create a legally binding obligation by his or her own signature. For purposes of this paragraph, "endorsement" means a signature of any party—other than the borrower—who is to assume secondary liability on the loan.

(i) *Loan disbursement.* (1)(i) A lender may not disburse a loan prior to the issuance of the insurance commitment by the Secretary. The lender shall disburse loan funds by means of a check payable only to the borrower. The check must require the personal endorsement of the borrower. Deposit of the check by the borrower in his or her account at a bank or other financial institution constitutes endorsement for purposes of this paragraph.

(ii) The lender shall disburse the loan check directly to the borrower, either in person or by mail. The lender may not disburse the check to the borrower earlier than is reasonably necessary to meet the student's cost of attendance for the period for which the loan is made and in no case, without the Secretary's approval, earlier than 30 days prior to the date on which the student is scheduled to enroll.

(2) Neither a lender nor a school may obtain a borrower's power of attorney or other authorization to endorse a disbursement check on behalf of a borrower. The borrower shall personally endorse the check and may not authorize anyone else to endorse it on his or her behalf.

(3) For purposes of the Federal PLUS program, a check is a draft drawn on a bank and payable on demand.

(4) *Late disbursements.* (i) Under certain circumstances a lender, with the prior approval of the Secretary, may disburse a Federal PLUS loan after the student has ceased to be enrolled on at least a half-time basis or after the expiration date of the insurance commitment.

(ii) The Secretary will approve a lender's request to make a disbursement under these circumstances only if satisfied that the loan proceeds will be used for the student's cost of attendance for the period of enrollment for which the loan was intended.

(20 U.S.C. 1077, 1078-2, 1080, 1082, 1083, 1085)

§ 683.60 Due diligence in collecting a loan.

(a) *General.* (1) A lender must exercise due diligence in the collection of a Federal PLUS loan. In order to exercise due diligence, a lender, except as provided in subparagraph (2) of this paragraph, shall implement the following procedures when a borrower fails to honor his or her payment obligation. If two borrowers are liable for repayment of a loan as co-makers, the lender shall follow these procedures with respect to both borrowers.

(2) A lender shall respond on a timely basis to written inquiries and other communications from a borrower.

(3) Paragraphs (b) through (f) of this section shall not apply—

(i) After it has been determined, or while a lender is seeking to have a determination made, that a borrower has died, become totally and permanently disabled, or has filed a bankruptcy petition as set forth in § 683.63; or

(ii) After it has been determined that any of the conditions for filing a default claim without previous collection efforts exist, as set forth in §§ 683.64 and 683.66(e).

(b) *Initial delinquency.* When a borrower is delinquent in making a payment, the lender shall remind the borrower within 15 working days of the date the payment was due by means of a letter, notice, telephone call, or personal contact. If payments do not begin or resume, the lender must attempt to contact the borrower at least 3 more times at regular intervals during the rest of the 4-month period that started on the due date of the delinquent payment. These contacts should become progressively more forceful in tone.

(c) *Skip-tracing assistance.* Whenever a lender does not know the borrower's current address, the lender shall attempt to locate the borrower through normal commercial collection techniques, including contacting any other individuals named on the borrower's loan application. If these efforts are unsuccessful, the lender shall attempt to learn the borrower's current address through use of the Department of Education's skip-tracing assistance. The Secretary does not pay insurance on a default claim if the lender did not know the borrower's address but failed to request this skip-tracing assistance. If the lender obtains knowledge of the borrower's address prior to filing a default claim, the lender must attempt to contact the borrower.

(d) *Pre-claim assistance.* When a borrower is 60 days delinquent in making payment, the lender must request pre-claim assistance from the Department of Education. This pre-claim assistance consists of a series of letters being sent to the borrower, urging the borrower to contact the lender and begin or resume payments. The Secretary does not pay insurance on a default claim if the lender failed to request this pre-claim assistance.

(e) *Final demand letter.* A lender must send a final demand letter to the borrower at least 30 days before the lender files a default claim. The lender must allow the borrower at least 30 days to respond to the final demand letter. However, a lender need not send a final demand letter to a borrower whose address is unknown.

(f) *Litigation.* (1) If the borrower's loan is in default and the lender determines that the borrower has the ability to repay the loan, the lender may bring suit against the borrower to recover the amount of the unpaid principal and interest together with reasonable attorney's fees. Prior to bringing suit the lender shall—

(i) Obtain the Secretary's approval. A lender may seek the Secretary's approval to bring suit in anticipation that the lender's collection efforts will be unsuccessful. The Secretary will normally approve a lender's request to bring suit if the Secretary is satisfied that the borrower has the ability to repay the loan and that the collection efforts required by this section have been, or will be, made prior to the lender's bringing suit;

(ii) Notify the borrower that the Secretary's approval to bring suit has been obtained, and that suit will be brought unless the borrower cures the default; and

(iii) Indicate to the borrower that the lender will seek a judgment under which the borrower will be legally liable for payment of reasonable attorney's fees and court costs in addition to the unpaid principal and interest. The lender shall mail the notice to the borrower by certified mail, return receipt requested.

(2) The lender may bring suit if the borrower does not meet the terms of the lender's demand for payment within 10 days following the date of

delivery of the notice to the borrower indicated on the receipt.

(3) A lender may first apply the proceeds of any judgment against its reasonable attorney's fees and court costs, whether or not the judgment provides for these fees and costs.

(20 U.S.C. 1078-2, 1080, 1082, 1085)

§ 683.61 Forbearance.

(a) *General.* (1) The Secretary encourages a lender under the Federal PLUS program to grant forbearance for the benefit of a borrower in order to prevent a borrower from defaulting on his or her payment obligations. "Forbearance" means permitting the temporary cessation of payments, allowing an extension of time for making payments, or accepting smaller payments than were previously scheduled.

(2) A lender may grant forbearance of payments of principal and/or interest under paragraph (b) or (c) whenever—

(i) poor health or other personal problems affect the ability of the borrower to make scheduled payments, or

(ii) the borrower's payments of principal are deferred.

If two borrowers are liable for repayment of a loan as co-makers, the lender shall grant forbearance only when the ability of both borrowers to make scheduled payments is adversely affected.

(3) If payments of interest are forborne they may be added to the principal amount of the loan obligation on the date that repayment resumes or at the end of the period of forbearance.

(b) *Basic repayment terms.* A lender may grant forbearance on terms that are consistent with the minimum annual payment requirement and the 10-year limitation on length of repayment if the lender and the borrower agree in writing to the new terms, or, in the case of forbearance of interest during a period of deferment, if the lender informs the borrower in writing at the time the deferment is granted that interest payments are to be forborne.

(c) *Inconsistent repayment terms.* A lender may also grant forbearance for a period of up to one year at a time on terms that are inconsistent with the minimum annual repayment requirement and the 10- and 15-year limitations on length of repayment if the lender complies with these requirements:

(1) The lender must reasonably believe that the borrower intends to repay the loan but is currently unable to make payments in accordance with the terms of the loan note. The lender shall state the basis for its belief in writing and maintain that statement in its loan file on that borrower.

(2) Both the borrower and an authorized official of the lender shall sign a written agreement of forbearance.

(3) If the agreement between the borrower and lender provides for postponement of all payments, the lender shall contact the borrower at least every 3 months during the period of forbearance in order to remind the borrower of the outstanding obligation to repay.

(20 U.S.C. 1078-2, 1080, 1082)

§ 683.62 Assignment of a loan.

(a) *General.* A Federal PLUS note may not be assigned except to another eligible lender. In this section "seller" means any kind of assignor, "buyer" means any kind of assignee, and "assignment" means any kind of transfer, including assignment as security.

(b) *Procedure.* (1) A Federal PLUS note assigned from one lender to another must be subject to a blanket endorsement together with other Federal PLUS notes being assigned or must individually bear effective words of assignment. Either the blanket endorsement or the note must be signed and dated by an authorized official of the seller.

(2) The buyer must—

(i) Notify the Secretary of the assignment if the right to receive special allowance has been assigned; and

(ii) Ensure that the borrower is notified promptly if the assignment results in the borrower being required to make installment payments, or direct other matters connected with the loan, to a party other than the party whom the borrower dealt with before the assignment. The buyer must include in the notice to the borrower a clear statement of all the borrower's rights and responsibilities which arise from the assignment of the loan, including a statement regarding the consequences of making payments to the seller or any prior holder of the loan, subsequent to receipt of the notice.

(c)(1) *Risks assumed by the buyer.* Upon acquiring a Federal PLUS note, a new holder assumes responsibility for the consequences of any previous violation of applicable statutes or regulations or the terms of the note. A Federal PLUS note is not a negotiable instrument, and a subsequent holder is not a holder in due course. If the borrower has a valid legal defense that could be asserted against the original holder, the borrower can also assert the defense against the new holder. If the new holder files a default claim on a loan, the Secretary denies the default claim if there was a legal defect affecting the initial validity or insurability of the loan and to the extent of the borrower's legal defenses. Furthermore, when a new holder files a claim on a Federal PLUS loan, it must provide the Secretary with the same documentation that would have been required of the original lender.

(2) *Special additional rules for assignment of loans made or originated by a school.* The buyer shall not be entitled to rely upon the statements provided by a school in the making or origination of a loan by the school. In addition, the Secretary considers any unpaid tuition refund that was due to the student under § 683.87 before the assignment from a school that made or originated the loan as having been paid to the subsequent holder on the borrower's behalf.

(d) *The Secretary's approval.* (1) The approval of the Secretary is required prior to the assignment of a note to any eligible lender which has not entered into a Federal PLUS insurance contract with the Secretary. The Secretary approves such an assignment only if the Secretary is satisfied that one of the parties to the assignment will comply with all the requirements applicable to lenders under the PLUS program regulations.

(2) Any arrangement where the loan is assigned to an eligible lender that would hold the loan in trust must receive the Secretary's prior approval. A lender that holds a loan as a trustee assumes responsibility for complying with all applicable statutory and regulatory requirements imposed on a holder of a loan.

(e) *Warranty.* (1) Nothing in this section precludes the buyer of a Federal PLUS loan from obtaining a warranty from the seller covering certain future reductions by the Secretary in computing the amount of insurable loss, if any, on a claim filed on the loan.

(2) The warranty may only cover reductions which are attributable to an act or failure to act of the seller or other previous holder.

(3) The warranty may not cover matters that the buyer is responsible for under the PLUS program regulations.

(20 U.S.C. 1078-2, 1079, 1080, 1082)

§ 683.63 Death, disability, and bankruptcy.

(a) *Death.* (1) If a borrower dies, the borrower's obligation to make any further payments of principal and interest on a Federal PLUS loan is cancelled. However, if the loan was obtained by two parents as co-makers, and only one of the borrowers dies, the surviving borrower remains obligated to repay the loan and the loan is not eligible for cancellation.

(2) The lender may not attempt to collect on the loan from the borrower's estate.

(3) The lender may make a determination that the borrower has died on the basis of a death certificate or other proof of death which is acceptable under applicable State law. If a death certificate or other acceptable proof of death is not available, the borrower's obligation on the loan is cancelled only upon a determination by the Secretary on the basis of other evidence that the Secretary finds conclusive.

(4) The lender shall return to the sender any payments received from the estate of the borrower or paid on behalf of the borrower after the date of death.

(b) *Disability.* (1) If the lender determines that a borrower is totally and permanently disabled, the borrower's obligation to make any further payments of principal and interest on a

Federal PLUS loan is cancelled. However, if the loan was obtained by two parents as co-makers, and only one of the borrowers becomes totally and permanently disabled, the other borrower remains obligated to repay the loan and the loan is not eligible for cancellation. A borrower is not considered totally and permanently disabled on the basis of a condition that existed prior to his or her loan application unless the borrower's condition has substantially deteriorated since he or she submitted the loan application.

(2) After being notified by the borrower or the borrower's representative that the borrower claims to be totally and permanently disabled, the lender may not attempt to collect on the loan from the borrower. The lender shall promptly request that the borrower or his or her representative obtain a certification from a physician who is a doctor of medicine or osteopathy and legally authorized to practice, on a form provided by the Secretary, that the borrower is totally and permanently disabled. If the form is not submitted to the lender within 60 days of the date the lender requested it, the lender may resume collection unless the physician has notified the lender that a longer period of time is required to make the determination.

(3) If the lender receives a certification from a physician, as described in paragraph (b)(2), that the borrower is totally and permanently disabled, the lender must return to the borrower any payments that it may have received from or on behalf of the borrower after being notified that the borrower claims to be totally and permanently disabled.

(c) *Bankruptcy.* (1) If a borrower has filed a bankruptcy petition, the Secretary will assume the borrower's liability for unpaid principal and interest. However, if the loan was obtained by two parents as co-makers and only one of the borrowers has filed a bankruptcy petition, the other borrower remains obligated to repay the loan and the Secretary does not assume liability for unpaid principal and interest.

(2) Once a lender determines that a borrower has filed a bankruptcy petition, the lender may not attempt to collect on the loan and must file a bankruptcy claim with the Secretary.

(3) The lender may determine that a borrower has filed a bankruptcy petition upon receipt of notice of the first meeting of creditors from the bankruptcy court.

(4) If the loan obligation is not discharged in bankruptcy, the Secretary shall treat the claim as a default claim. The lender shall not be required to repurchase the loan.

(20 U.S.C. 1078-2, 1082, 1087)

§ 683.64 Cessation of lender collection activity in certain cases.

(a) A lender shall cease collection activity on a Federal PLUS loan, and file a default claim with the Secretary within 60 days after the lender determines that any of the following conditions exist, whether or not the borrower is eligible for deferment:

(1) The school in which the student on whose behalf the loan was made was enrolled terminated its teaching activities involving that student during the academic period covered by the loan.

(2) The Secretary—

(i) Has instituted an action to limit, suspend, or terminate the eligibility of the school in which the student was enrolled for the academic period covered by the loan, or the eligibility of any lender that has held the loan; and

(ii) Has directed that a claim be filed on the loan.

(3)(i) A school or a lender is the subject of a lawsuit or Federal administrative proceeding and the Secretary determines that the proceeding involves allegations that, if proven, would entitle the borrower to refuse to repay all or a portion of the loan, or to obtain a judgment to recover payments made on the loan, or would entitle the student to take such action if the loan had been made to the student; and

(ii) The Secretary has directed that a claim be filed on the loan.

(b)(1) If the Secretary finds that a determination made by a lender under this section is correct, the Secretary pays the default claim as otherwise provided for under these regulations.

(2) If the Secretary finds that the lender's determination is not correct,

the Secretary refuses payment and the lender shall resume normal collection activity on the loan.

(c) A lender may not, as a result of a default claim filed with the Secretary under this section, make a report to any credit bureau or other third party concerning the borrower's failure to repay his or her loan.

(20 U.S.C. 1078-2, 1080, 1082)

§ 683.65 Procedures for filing claims.

(a)(1) A lender may file an insurance claim for any of the following reasons:

(i) The loan is in default. A loan is not in default until the 120-day or, if applicable, the 180-day period, described in the definition of "default" in § 683.10, has elapsed. If the borrower fails to make an installment payment when due, the 120- or 180-day period begins the day after the due date of that installment.

(ii) Any of the conditions for filing a default claim without collection efforts exist, as set forth in §§ 683.64 and 683.66(e).

(iii) The borrower has died.

(iv) The borrower is totally and permanently disabled.

(v) The borrower has filed a bankruptcy petition.

(2) If a loan was obtained by two eligible parents as co-makers, the applicable condition described above must apply to both parents.

(b) *Filing a claim application.* A lender shall file an insurance claim on a form provided by the Secretary. The lender shall attach to the claim all documentation that the Secretary may require. Failure to submit the required documentation may result in a claim not being honored. The Secretary may also deny a claim that is not filed on time.

(c) *Documentation required for all PLUS program claims.* The Secretary requires the following documentation for all claims:

(1) The original promissory note.

(2) The loan application.

(3) A payment history, as described in § 683.68(a)(1)(viii), if any payments have been made.

(4) A collection history, as described in § 683.68(a)(1)(ix).

(d) *Assignment of note.* The Secretary's payment of a claim is contingent upon receipt of an assignment to the United States of America of all right, title, and interest of the lender in the note underlying the claim. The lender shall agree to reimburse the Secretary for any overpayments of special allowance that the Secretary may have made for the loan.

(e) *Specific procedures applicable to the individual claim categories.* A lender must also comply with the following requirements for filing default, death, disability, and bankruptcy claims:

(1) *Default claims.* (i) Unless a lender has notified the Secretary that it has filed suit against the defaulted borrower, after obtaining the Secretary's approval for the suit, it must file a default claim with the Secretary within 90 days after the loan has been determined to be in default, or the lender has determined that any of the conditions for filing a default claim without collection efforts exist, as set forth in §§ 683.64 and 683.66(e).

(ii) In addition to the documentation required for all claims, the lender must submit with its default claim the following:

(A) A copy of the final demand letter, if required under § 683.60(e).

(B) The original or a copy of all personal correspondence addressed to or from, or on behalf of, the borrower relevant to the amount owed by the borrower, whether that correspondence involved the original lender, a subsequent holder, or an independent servicing agency.

(C) Evidence of the lender's requests to the Department of Education for pre-claim assistance and, if a request was required under § 683.60(c), skip-tracing assistance.

(iii) If the lender files a default claim on a loan and subsequently receives a notice of the first meeting of creditors in the proceeding of the borrower in bankruptcy, the lender shall promptly forward that notice to the Department of Education. The lender may not file a proof of claim with the bankruptcy court in this situation.

(2) *Death claims.* A lender shall file a death claim with the Secretary within 60 days after the lender determines that a borrower is dead. In addition to the documentation required for

all claims, the lender shall submit with its death claim those documents which formed the basis for its determination of death.

(3) *Disability claims.* A lender shall file a disability claim with the Secretary within 60 days after it receives a certification from a licensed physician that a borrower is totally and permanently disabled. In addition to the documentation required for all claims, the lender shall submit with its disability claim a copy of the certification.

(4) *Bankruptcy claims.* A lender shall file a bankruptcy claim with the Secretary within 60 days after the lender receives a notice that the borrower has filed a bankruptcy petition. In addition to the documentation required for all claims, the lender shall submit with its bankruptcy claim to the Secretary the following:

(i) An assignment to the United States of America of its proof of claim.

(ii) Evidence that a bankruptcy petition has been filed and all pertinent documents sent to or received from the bankruptcy court.

(iii) A statement of any facts of which the lender is aware that may form the basis for an objection to the bankrupt's discharge or an exception to the discharge.

(20 U.S.C. 1078-2, 1080, 1082, 1087)

§ 683.66 Determination of amount of loss on claims.

(a) *General.* The amount of loss to be paid on a claim for a Federal PLUS loan shall be equal to the unpaid balance of the principal and interest. The unpaid principal amount of the loan may include capitalized interest.

(b) *Payment of insured interest.* (1) The payment of an approved claim covers the unpaid interest that accrues during the following periods:

(i) During the period before the claim is filed, not to exceed the period permitted under paragraph (e) of § 683.65 for filing the claim.

(ii) During a period not to exceed 30 days following the return of the claim to the lender by the Secretary for additional documentation necessary for the claim to be approved by the Secretary.

(iii) During the period required by the Secretary to approve the claim and to authorize payment.

(2) The Secretary pays the unpaid interest that accrues during other periods which are tied to the type of claim involved:

(i) The payment on a default claim covers unpaid interest that accrues through the date of default.

(ii) The payment on a bankruptcy claim covers unpaid interest that accrues before the lender receives notice that the borrower filed a bankruptcy petition.

(iii) The payment on a death claim covers unpaid interest that accrues before the lender determines that the borrower is deceased.

(iv) The payment on a disability claim covers unpaid interest that accrues before the lender receives a certification from a physician that the borrower is totally and permanently disabled.

(c) *Factors affecting the insurability of a loan.* (1) In determining whether to approve an insurance claim for payment, the Secretary considers legal defects affecting the initial validity or insurability of the loan.

(2) The Secretary also deducts from a claim any amount that is not a legally enforceable obligation of the borrower.

(3) The Secretary further considers whether all holders of the loan have complied with the requirements of the Federal PLUS regulations, including those concerned with making and collecting a loan, the timely filing of a claim, and the submission of documents with a claim.

(4) The Secretary does not pay a death, disability, or bankruptcy claim for a loan after a default claim for that loan has been disapproved by the Secretary.

(d) *Special rules for a loan acquired by assignment.* If a claim is filed by a lender that obtained a loan by assignment, that lender is not entitled to any payment under this section greater than that to which a previous holder would have been entitled. In particular, the Secretary deducts from the claim any amounts that are attributable to payments made by the borrower to a prior holder of the loan before the borrower received proper notice of the assignment of the loan.

(e) *Special rules for loans made by school lenders.*

(1) If the loan for which a claim is filed was originally made by a school and the claim is filed by that school, the Secretary deducts from the claim—

(i) An amount equal to any unpaid refund that the school owes the student to whom or on whose behalf the loan was made under § 683.87; or

(ii) An amount attributable to any portion of the program of study that the student was unable to complete because the school terminated its teaching activities during the period of time for which the borrower obtained a Federal PLUS loan. If this situation occurs, the lender shall immediately file a default claim with the Secretary. The Secretary reimburses the lender in an amount which bears the same ratio to the total amount of the claim as the amount of the educational services that the student received before the school terminated its teaching activities bears to the total services which the student would have received, during the period for which the loan was obtained, had the school not terminated its teaching activities.

(2) If the loan for which a claim is filed was originally made by a school but the claim is filed by another lender that obtained the note by assignment, the Secretary deducts from the claim—

(i) An amount equal to any unpaid refund that the school owed the student to whom or on whose behalf the loan was made under § 683.87 prior to the assignment of the loan to a subsequent holder;

(ii) An amount attributable to any portion of the program of study that the student was unable to complete because the school terminated its teaching activities during the period of time for which the borrower obtained a Federal PLUS loan. If this situation occurs, the lender shall immediately file a default claim with the Secretary. The Secretary reimburses the lender in an amount which bears the same ratio to the total amount of the claim as the amount of the educational services that the student received before the school terminated its teaching activities bears to the total services which the student would have received, during the period for which the loan was obtained, had the school not terminated its teaching activities.

(f) *Special rules for a loan originated by a school.* For purposes of this section, a loan which is originated by a school shall be treated in accordance with paragraph (e)(1) of this section as if it were a loan made and still held by a school.

(g) *Circumstances under which defects in claims may be cured or excused.* (1) The Secretary may permit a lender to cure certain defects in a specified manner as a condition for payment of a default claim.

(2) The Secretary may excuse certain defects—

(i) If the holder submitting the default claim satisfies the Secretary that the defect did not contribute to the default or prejudice the Secretary's attempt to collect on the loan from the borrower; or

(ii) If the defect arose while the holder submitting the default claim was holding the loan but the Secretary had previously found that the holder had procedures in effect sufficient to ensure that such a defect would not normally arise.

(3) The Secretary may also excuse certain defects if the Secretary is satisfied that—

(i) The defect arose while the loan was held by another lender;

(ii) The assignment of the loan was an arm's length transaction;

(iii) The present holder did not know of the defect at the time of the assignment; and

(iv) (A) The present holder could not have become aware of the defect through an examination of the loan documents; or

(B) The present holder had relied on a finding by the Secretary that the lender holding the loan when the defect arose had procedures in effect sufficient to ensure that such a defect would not normally arise.

(20 U.S.C. 1078-2, 1080, 1082)

§ 683.67 The Secretary's collection efforts after payment of a default claim.

After paying a default claim on a Federal PLUS loan, the Secretary attempts to collect from the borrower in accordance with the Federal Claims Collection Standards (4 CFR Parts 101-105). The Secretary attempts collection of all unpaid principal and accrued interest, except in the following situations:

(a) *The borrower has a valid defense on the loan.* In this situation, the Secretary refrains from collection against the borrower to the extent of any defense that the borrower may have.

(b) *A school owes the student to whom or on whose behalf the loan was made a refund for the period covered by the loan.* In this situation, the Secretary refrains from collection to the extent of the unpaid refund the school owes the student on whose behalf the loan was made under § 683.87, if the student assigns to the Secretary the right to receive the refund and the borrower agrees in writing to pay the Secretary the remaining portion of his or her indebtedness on the loan.

(c) *The school attended by the student to whom or on whose behalf the loan was made closes during the academic period covered by the loan.* (1) In this situation, the Secretary refrains from collection against the borrower to the extent that the student would have had a defense on the loan if the loan was—

(i) Made by the school to the student;

(ii) Part of the same transaction as the enrollment at the school of the student; and

(iii) Paid to the school in consideration for the educational services that were to be provided by the school.

(2) As a condition of this forgiveness—

(i) The student must assign to the Secretary the right to receive any refund that the school owes the student under § 683.87; and

(ii) The borrower must agree in writing to pay the Secretary the remaining portion of his or her indebtedness on the loan.

(d) *A school or lender is the subject of a lawsuit or Federal administrative proceeding.* In this situation, if the Secretary determines that the proceeding involves allegations that, if proven, would provide the borrower with a full or partial defense on the loan, or, if the borrower is a parent, would provide the student on whose behalf the loan was made with such a defense if the loan had been made to the student, then the Secretary may suspend collection activity on all or part of a loan until the proceeding ends. The Secretary suspends collection activity only for so long as the Secretary believes that the proceeding is being prosecuted in good faith and that the allegations that relate to the borrower's or student's defense are reasonably likely to be proven. When a final resolution is reached, the Secretary collects from the borrower to the extent appropriate.

(e) *A school or lender is the subject of a limitation, suspension, or termination action by the Secretary.* In this situation, if the Secretary determines that the final outcome of the action could provide the borrower with a full or partial defense on the loan, or, if the borrower is a parent, would provide the student on whose behalf the loan was made with such a defense if the loan had been made to the student, then the Secretary may suspend collection activity pending the final resolution of the action. When a final resolution is reached, the Secretary collects from the borrower to the extent appropriate.

(f) *The borrower dies, becomes totally and permanently disabled, or has the Federal PLUS loan discharged in bankruptcy.* In this situation, the Secretary terminates all collection activity against the borrower. However, if the loan was obtained by two eligible parents as co-makers, and only one of the borrowers meets one of these conditions, the Secretary continues collection activity against the other borrower.

(20 U.S.C. 1078-2, 1080, 1082)

§ 683.68 Records, reports, and inspection requirements for lenders.

(a) *Records.* (1) A lender shall keep complete and accurate records of each Federal PLUS loan which it holds. The records must be organized in a way that permits ready identification of the current status of each loan. The required records include—

(i) The loan application;

(ii) The original promissory note until it is paid in full, after which a copy is required;

(iii) A record of each disbursement of loan proceeds;

(iv) Notices of changes in a borrower's address;

(v) Evidence of the borrower's eligibility for a deferment;

(vi) The documents required for the exercise of forbearance;

(vii) Documentation of the assignment of the loan;

(viii) A payment history showing the date and amount of each payment received from or on behalf of the borrower, and the amounts attributable to principal and interest;

(ix) A collection history showing the date and subject of each communication with the borrower for collection of a delinquent loan; and

(x) Any additional records as specifically required by these regulations which are necessary to document the validity of an insurance claim or to make any reports required by the Secretary under these regulations.

(2)(i) A lender shall retain the records required for each loan for not less than 5 years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. However, in particular cases the Secretary may require the retention of records beyond this minimum period.

(ii) The lender may store records in microfilm or computer format. However, the holder of a promissory note must retain the original note until the loan is fully repaid. At that time the lender shall return the original note to the borrower, and retain copies for the prescribed period.

(b) *Reports.* A lender shall submit reports to the Secretary at the time and in the manner the Secretary may reasonably require, including but not limited to the following:

(1) The Lender's Manifest.

(2) The Lender's Request for Payment of Interest and Special Allowance.

(3) The Lender's Annual Report on Outstanding Loans.

(c) *Inspections.* Upon request, a lender shall afford the Secretary, the Comptroller General of the United States, and any of their authorized representatives access to its records in order to assure the correctness of its reports.

(20 U.S.C. 1077, 1078, 1078-2, 1079, 1080, and 1082)

Subpart E—Requirements, Standards, and Payments for Participating Schools

§ 683.80 Participation agreement between an eligible school and the Secretary for participation in the PLUS program.

(a) *General.* Participation of a school in the PLUS program means that its students and the parents of the school's dependent undergraduate students are eligible to receive PLUS loans for the cost of attendance of students at that school. To participate in the PLUS program, under either the Federal PLUS program or a guarantee agency program, a school must—

(1) Establish its basic eligibility as an institution of higher education or a vocational school, as defined in § 683.10, through certification by the Division of Eligibility and Agency Evaluation, Office of Postsecondary Education, Department of Education; and

(2) Enter into a written agreement with the Secretary. The agreement must be signed by an appropriate official of the school on a form provided by the Secretary.

(b) *Program participation agreement.* In the agreement, the school promises to comply with the applicable provisions of—

(1) The Act and the PLUS regulations;

(2) 34 CFR Part 668 (Student Assistance General Provisions); and

(3) 34 CFR Part 678 (Student Consumer Information Services).

(c) *Time to respond.* The Secretary responds to a school's request for an agreement to participate in the PLUS program within 30 days after receiving the request.

(d) *Denial or limitation of participation.* (1) If the Secretary decides not to approve a request for an agreement or approves only limited participation in the PLUS program by the school, the reason for the decision is included in the response.

(2) The Secretary provides an opportunity for the school to meet with a designated Department of Education official, if the school wishes to appeal a decision involving either—

(i) Denial of an agreement for participation; or

(ii) Approval of an agreement that limits the school's participation.

(3) The Secretary does not, however, grant an opportunity for appeal or give reasons for denying the participation, or approving only the limited participation, of a school if the school submits its request within 6 months of a previous denial or limited approval for either the PLUS program or the GSLP.

(e) *Change in ownership or form of control.* A PLUS program participation agreement automatically terminates when a school changes its ownership or form of control. The termination is effective at the time the change occurs. A new agreement must be signed and approved by the Secretary for the school to participate under the new ownership or form of control.

(f) *Extension of current agreements.* Until the Secretary makes a PLUS program participation agreement available, a school that has entered into an agreement with the Secretary to participate in the GSLP may participate in the PLUS program in accordance with applicable provisions of these regulations.

(20 U.S.C. 1078-2, 1082, 1094)

§ 683.81 Agreement between the Secretary and a school that makes or originates PLUS loans.

(a) *General.* (1) A school must have an agreement with the Secretary in order to make or originate PLUS loans under either the Federal PLUS program or a guarantee agency PLUS program. The definition of origination is in § 683.10.

(2) *Extension of current agreements.* Until the Secretary makes a PLUS program origination agreement available, a school that has entered into an agreement with the Secretary to make or originate loans in the GSLP may make or originate loans under the PLUS program in accordance with applicable provisions of these regulations.

(b) *Terms of the agreement.* An agreement to allow a school either to make or originate loans contains the following terms:

(1) The school will not make or originate GSLP or PLUS loans which would be outstanding to or on behalf of more than 50 percent of its undergraduate students who are in attendance at that school on at least a half-time basis or to the parents of such students. An exception to this rule, however, is contained in paragraph (d) of this section.

(2) The school will inform any undergraduate student or parent who seeks to obtain a PLUS loan from the school that unless the school has previously made or originated a PLUS loan to or on behalf of that student, the borrower must first make a good faith effort to obtain a loan from a commercial lender.

(3)(i) The school will not make or originate a loan for an academic period to a borrower described in paragraph (b)(2) of this section until the borrower provides the school with evidence of denial of a loan by a commercial lender for the same academic period. Evidence acceptable for this purpose is described in paragraph (c) of this section.

(ii) In determining whether a school has complied in good faith with this requirement, the Secretary may take into consideration any pattern reflected by letters of denial or borrowers' statements referred to in paragraph (c) of this section that indicate that the school has not given sufficient counseling to borrowers to seek loans first from a commercial lender. An example of an unacceptable pattern would be if all loan denials to the students or parents of a school's students were made by a small number of lenders.

(c) *Establishing a loan denial by a commercial lender.* (1) To ensure under paragraph (b)(3) of this section that a borrower has sought and been denied a loan from a commercial lender for an academic period, the school shall obtain from the borrower—

(i) A written statement from a commercial lender indicating that the lender denied the borrower a loan for that academic period; or

(ii) The borrower's statement, made under penalty of perjury, indicating both the refusal of a loan by a commercial lender and that lender's refusal to provide a written statement of the denial.

(2) If the borrower statement, is used to establish the denial of a loan, that statement must include—

(i) The name of the lender that denied the loan;

(ii) The approximate date on which the loan was denied;

(iii) The name of the official who communicated the denial to the borrower and

(iv) The borrower's signature. The statement must be signed by the borrower under penalty of perjury.

(3) The refusal of a lender to make a loan to a borrower for the entire amount requested by the borrower constitutes a denial of a loan, if the school determines that the borrower is eligible for a loan of that amount. If the denial is based upon the borrower's inability to obtain the entire amount requested, the school may either—

(i) Make or originate a loan to that borrower for the entire amount; or

(ii) Supplement the loan that the commercial lender is willing to make with a second loan to the borrower.

(d) *Waiver of the 50 percent lending limit.* A school may request a waiver of the 50 percent lending limit under paragraph (b)(1) if adherence to that limit would create a substantial hardship to the school's present or prospective students or their parents. The Secretary determines whether to grant the school a waiver after considering the following:

(1) The extent to which the school provides, and expects to continue providing, educational opportunities to economically disadvantaged students, as measured by the percentage of these students enrolled at the school who—

(i) Fall within the "low-income family" category used by the Bureau of the Census;

(ii) Would not be able to enroll, or continue their enrollment, at that school without a GSLP or PLUS loan made or originated by the school; and

(iii) Would not be able to obtain a comparable education at another school.

(2) The extent to which the school offers academic programs that—

(i) Are unique in the geographical area the school serves; and

(ii) Would not be available to some students if the school adhered to the 50 percent lending limit.

(3) The quality of improvements expected in the school's—

(i) Management of student financial assistance programs; and

(ii) Conformance with sound business practices.

(20 U.S.C. 1075, 1078, 1078-2, 1082, 1083)

§ 683.82 Providing information to prospective students.

(a) *General.* (1) A school shall present each of its prospective students with a complete and accurate statement containing information about the school. The statement must be in written form and must be presented to the prospective student prior to the time that he or she becomes obligated to pay the school any tuition or fees.

(2) The statement provided by the school must include information pertaining to—

(i) The school's current academic or training programs in which the student has expressed interest;

(ii) The school's faculty in those programs; and

(iii) The school's facilities relating to those programs.

(b) *Providing employment data.* In addition to the information required by paragraph (a) of this section, a school that offers programs or courses of study designed to prepare students for a particular vocational, trade or career field (e.g., truck driving, teaching or pharmacy) shall provide a prospective student in that field with a written statement regarding the employment of students previously enrolled in those programs or courses.

(1) The employment information must include data regarding the percentage of previously enrolled students who entered positions of employment directly related to their enrollment at the school and data regarding the average starting salaries of those students.

(2) The school may provide the prospective student with the most recent comparable regional or national statistical student employment data in lieu of the information about the school's own students if—

(i) After a reasonable effort, the school cannot obtain meaningful data on the employment of its own students; or

(ii) The data the school possesses regarding its own students is more than 3 years old and cannot, after a reasonable effort, be updated.

(3) To the extent that information is available, the school should provide a prospective student with information regarding the long-range prospects for employment in the particular vocational, trade or career field that the student intends to prepare for at the school.

(20 U.S.C. 1078-2, 1082, 1085, 1094)

§ 683.83 Correspondence school schedule requirements.

(a) *General.* A school offering a course of study by correspondence shall establish a schedule for submission of lessons by its students. This schedule must be given to a prospective student prior to that person's enrollment.

(b) *Information in the schedule.* The school shall include the following information in its schedule:

(1) The number of lessons in the course.

(2) The intervals at which lessons are to be submitted.

(3) The date by which the course is to be completed.

(4) The period of time within which any resident training must be completed.

(c) *Additional requirements.* The schedule must conform to the requirements set forth in paragraph (a)(3)(ii) of the definition of "vocational school" in § 683.10.

(20 U.S.C. 1078-2, 1082)

§ 683.84 Certifications by a participating school in connection with a PLUS loan application.

A school shall accurately and completely fill out its portion of a PLUS loan application. In determining whether an undergraduate student is a dependent or an independent student, the school may rely in good faith and in the absence of information to the contrary upon statements of the student. The information requested of the school pertains to the following:

(a) The student's eligibility for a loan, as determined in accordance with § 683.11.

(b) The student's eligibility to have a parent borrow on his or her behalf, as determined in accordance with § 683.11, if the borrower is a parent.

(c) The parent's eligibility for a loan, as determined in accordance with § 683.11, if the borrower is a parent.

(d) The student's estimated cost of attendance for the period for which the loan is sought.

(e) The student's estimated financial assistance for the period for which the loan is sought.

(20 U.S.C. 1077, 1078, 1078-2, 1085, 1094)

§ 683.85 [Reserved]

§ 683.86 [Reserved]

§ 683.87 Refund policy.

(a) *General.* (1) A school shall have a fair and equitable refund policy under which it will make a refund of unearned tuition, fees and room and board charges to a student who received a PLUS loan or whose parent received a PLUS loan on his or her behalf if the student—

(i) Does not enroll for the academic period for which the loan was intended; or

(ii) Does not complete the academic period for which the loan was made.

(2) The school shall state its refund policy clearly in writing. The school shall include in its refund policy the procedure a student would follow to obtain a refund.

(3) The school shall provide the written statement containing its

refund policy to a prospective student prior to the student's acceptance for initial enrollment. The school shall also make its refund policy known to currently enrolled students. If the school changes its refund policy, the school shall ensure that all students are made aware of the new policy.

(b) *Fair and equitable refund policy.* A school's refund policy is fair and equitable if that policy conforms with—

(1) The requirements of applicable State law; and

(2)(i) Specific refund standards set by the school's nationally recognized accrediting agency and approved by the Secretary; or

(ii) If no such standards exist, other specific refund policy standards, either contained in Appendix A to this Part or set by another association of institutions of postsecondary education and approved by the Secretary.

(20 U.S.C. 1078-2, 1082, 1094)

§ 683.88 Determining the date of a student's withdrawal.

(a) *Purpose.* This section establishes rules for how a school must determine the date (to include day, month and year) on which a student withdraws from the school for the purpose of calculating the amount of a refund due the student.

(b) *The withdrawal date.* The school shall establish the date of a student's withdrawal as follows:

(1) Generally, the student's withdrawal date is the earlier of—

(i) The date the student notifies the school of his or her withdrawal; or

(ii) The date the school determines that a student has withdrawn.

Paragraphs (b)(2) and (b)(3) contain additional rules applicable to particular situations.

(2) If the student has not returned to school at the expiration of a leave of absence approved under paragraph (c), the student's withdrawal date is the date of the first day of the leave of absence.

(3) If the student is enrolled in a program of study by correspondence, the student's withdrawal date is normally 60 days after the due date of a required lesson that the student failed to submit in accordance with the schedule for lessons established by the school under § 683.83. However, if the student establishes in writing, within the 60-day period, a desire to continue in the program and an understanding that the required lessons must be submitted on time, the school may grant that student a restoration to in-school status. However, the school may not grant the student more than one restoration to in-school status on this basis.

(c) *Leaves of absence.* A student who is absent from school and who has been granted a leave of absence by the school, in accordance with this paragraph, is not considered to have withdrawn from school for purposes of this section. A school may grant a leave of absence to a student provided—

(1) The student has made a written request to be granted a leave of absence;

(2) The leave of absence involves no additional charges by the school to the students;

(3) The leave of absence does not—

(i) Exceed 60 days; or

(ii) Exceed 6 months if either of the following circumstances exists;

(A) The school is not a correspondence school and the school's next period of enrollment after the start of the leave of absence would begin more than 60 days after the first day of the leave of absence; or

(B) The absence is requested because of the student's medically determinable conditions. In this case, the student must provide the school with a recommendation from a physician for a leave of absence longer than 60 days; and

(4) The student has not previously been granted a leave of absence by the school. Additional leaves of absence for a student must be approved by the Secretary.

(20 U.S.C. 1078-2, 1082, 1094)

§ 683.89 Payment of a refund to a lender.

(a)(1) A school shall pay that portion of the student's refund that is allocable to a PLUS loan to—

(i) The original lender; or

(ii) A subsequent holder, if the loan has been transferred and the school knows the new holder's identity.

(2) When the school pays refund monies to a lender on behalf of a student who received a PLUS loan or whose parent received a PLUS loan on his or her behalf, the school shall provide simultaneous written notice of the action to the borrower and, if the borrower is a parent, the student on whose behalf the loan was made.

(b) *Calculating what portion of the refund to allocate to the loan.* In determining what portion of a student's refund for an academic period is allocable to a PLUS loan received by the borrower for the same academic period, the school must follow the procedures established in 34 CFR Part 668 (Student Assistance General Provisions).

(c) *Timely payment of refund.* A school shall pay each refund that is due in accordance with the following:

(1) Within 40 days after the date of the student's withdrawal from the school, as determined in accordance with § 683.88(b); or

(2) In the case of a student who does not return to school at the expiration of an approved leave of absence (see § 683.88(b)), within 40 days after the last day of that leave of absence.

(d) *Transition requirements.* In the event of a school's closure, termination, suspension of operations, or change in ownership, the school or its successors shall make provision for compliance with the requirements of this section with regard to students who obtained or on whose behalf parents obtained loans for periods of attendance at the school prior to the school's change in status.

(20 U.S.C. 1078-2, 1082, 1094)

§ 683.90 Termination of a school's lending eligibility.

(a) *General.* The Secretary terminates a school's eligibility to make GSLP and PLUS loans, under the Federal PLUS program, the FISLP or a guarantee agency program, if the school reaches the 15 percent limit on loan defaults described in paragraph (b) of this section.

(b) *The 15 percent limit.* (1) The Secretary terminates a school's eligibility to make GSLP and PLUS loans if, during each of the two most recent consecutive one-year periods for which data is available, the total amount of loans described in paragraph (b)(1)(i) of this section is equal to or greater than 15 percent of the total amount of loans described in paragraph (b)(1)(ii) of this section.

(i) The original principal amount of loans the school has ever made that went into default during that period.

(ii) The original principal amount of all loans the school has ever made, including loans in deferment status, that—

(A) Were in repayment status at the beginning of that period; or

(B) Entered repayment status during that period.

(2) In making the determination required by this section, the Secretary considers the status of all GSLP and PLUS loans made by the school, whether the loans are held by the school or a subsequent holder.

(c) *Exception based on hardship.* The Secretary does not terminate a school's lending eligibility under paragraph (a) of this section if the Secretary determines that the termination would result in a hardship for the school or its students. The Secretary makes this determination if the school shows that—

(1) Termination is not justified in light of recent improvements the school has made in its collection capabilities that will cause the school's loan delinquency rate to improve within the next year. Examples of these improvements include the following:

(i) Adopting more efficient collection procedures.

(ii) Employing increased collection staff; or

(2) Termination would cause a substantial hardship to the school's current or prospective students or their parents based on—

(i) The extent to which the school provides, and expects to continue to provide, educational opportunities to economically disadvantaged students, as measured by the percentage of students enrolled at the school who—

(A) Fall within the "low-income family" category used by the Bureau of the Census;

(B) Would not be able to enroll, or continue their enrollment, at that school without a GSLP or PLUS loan from the school; and

(C) Would not be able to obtain a comparable education at another school.

(ii) The extent to which the school offers academic programs that—

(A) Are unique in the geographical area the school serves; and

(B) Would not be available to some students if they or their parents could not obtain loans from the school.

(iii) The quality of improvements the school has made in its—

(A) Management of student financial assistance programs; and

(B) Conformance with sound business practices.

(d) *Termination procedures.* The Secretary does not terminate the lending eligibility of a school under this section until the school has been notified of the impending action and has had an opportunity for a hearing.

(1) *The termination notice.* A Department of Education official designated by the Secretary begins a termination action by sending a notice to the school. The notice is sent by certified mail with a return receipt requested. In the notice, the designated official—

(i) Informs the school of the intent to terminate the school's lending eligibility because of the school's default experience;

(ii) Specifies the proposed effective date of the termination as the next October 1;

(iii) Informs the school that it has 15 days to do the following—

(A) Submit any written material it wants considered in determining whether its lending eligibility should be terminated under paragraph (a) of this section, including written material in support of a hardship exception under paragraph (c) of this section; or

(B) Request a hearing to show why the school should not be terminated.

(2) *If a hearing is not requested.* If the school does not request a hearing but submits written material, the designated official considers that material and notifies the school as to whether the termination action will be taken.

(3) *The hearing.* The designated official schedules the date and place of a hearing for a school that has requested a hearing. The date of the hearing is at least 15 days from the date that the designated official received the request.

(i) A presiding officer (defined in § 683.101) conducts the hearing.

(ii) The presiding officer considers all written material presented before the hearing and any other material presented during the hearing.

(iii) The presiding officer determines if termination of the school's lending eligibility is warranted.

(4) *Review of a termination of a school's lending eligibility.* The decision of the presiding officer, or of the designated official, in the event that the school has submitted written material but has not requested a hearing, is subject to review by the Secretary.

(e) *Reinstatement of lending eligibility.* (1) A school that has its lending eligibility terminated under this section may not make further GSLP or PLUS loans unless it has entered into a new lending agreement with the Secretary under § 683.81.

(2) A new agreement may not take effect until at least one year after a school's lending eligibility has been terminated under this section.

(f) *Schools under the same ownership.* If a school makes loans to students or parents of such students in attendance at other schools under the same ownership, the Secretary may make the determinations required by this section by—

(1) Treating all the schools as one; or

(2) Treating each school on a school-by-school basis.

(20 U.S.C. 1078-2, 1082, 1085)

§ 683.91 Records, reports and inspection requirements for participating schools.

(a) *General.* (1) Each school shall establish and maintain proper administrative and fiscal procedures and all necessary records, as set forth in these regulations and 34 CFR Part 668 (Student Assistance General Provisions), in order to—

(i) Protect the rights of parents and students;

(ii) Protect the United States from unreasonable risk of loss due to defaults; and

(iii) Comply with any specific requirements in these regulations and 34 CFR Part 668.

(2) Each school shall submit such reports as the Secretary determines are necessary to comply with these regulations and 34 CFR Part 668.

(b) *Loan record requirements.* In addition to records required by 34 CFR Part 668, for each loan received by its students or the parents of its students a school shall maintain a record of—

(1) The name of the borrower;

(2) If the borrower is a parent, the name of the student on whose behalf the loan was made;

(3) The name of the lender;

(4) The address of the lender;

(5) The amount of the loan;

(6) The period for which the loan was intended;

(7) The data used to construct an individual student budget or the school's itemized standard budget used in calculating the student's estimated cost of attendance;

(8) The amount of the student's tuition and fees paid for that period; and

(9) The date the student paid the tuition and fees.

(c) *Reporting Student Status.* (1) When a school is notified that a PLUS loan has been made to or on behalf of a student who has been accepted for enrollment at that school but who fails to enroll on at least a half-time basis for the period for which the loan was intended, the school should immediately report this information to the lender.

(2) When a school becomes aware that a full-time student to whom a PLUS loan was made has ceased to be enrolled on a full-time basis, the school should immediately report this information to the lender.

(d) *Retention requirement for records and reports.*

(1) Unless otherwise directed by the Secretary, the school shall keep all records required under these regulations for 5 years, following the last date of the period for which the loan was intended.

(2) Unless otherwise directed by the Secretary, the school shall also keep, for 5 years after their completion, copies of reports and other forms utilized by the school related to PLUS loans.

(3) In the event of the closure, termination, suspension or change of ownership of a participating school, that school or its successor must make provision for the retention of the records and reports required by these regulations and for access to these records and reports for purposes of paragraph (e) of this section.

(4) Records and reports may be kept on microfilm or computer format.

(e) *Federal audits.* For purposes of audit and examination, the school shall give the Secretary, the Comptroller General of the United States, or any of their duly authorized representatives access to records required by these regulations and by 34 Part 668 and to any other pertinent books, documents, papers and records.

(f) *Non-Federal audits.* (1) The school shall, in conformance with 34 CFR Part 668, audit or have audited under its direction, all of the school's PLUS transactions to determine at a minimum—

(i) The fiscal integrity of financial transactions and reports; and

(ii) Whether the transactions are in compliance with the applicable laws and regulations.

(2) Audits shall be performed in accordance with the Department of Education's "Audit Guide for the Guaranteed Student Loan Program."

(3) The school shall have an audit performed at least once every two years. Each audit must cover the entire period of time that elapsed since the last audit that was performed.

(4) The school shall submit the audit report to the appropriate regional office of the Department of Education's Audit Agency for review.

(20 U.S.C. 1078-2, 1082, 1083, 1094)

Subpart F—Limitation, Suspension, or Termination of Lender Eligibility Under the Federal PLUS Program

§ 683.100 Purpose and scope.

(a) This subpart establishes rules for the limitation, suspension, or termination of the eligibility of an otherwise eligible lender to participate in the

Federal PLUS Program. These rules apply to a lender that violates any provision of the Federal PLUS program statute or any regulation, special arrangement, agreement, or limitation prescribed under the Federal PLUS program.

(b) This subpart does not apply to a determination that an organization fails to meet the definition of "lender" in § 683.10, nor to a school's loss of lending eligibility due to its default experience under § 683.90.

(c) This subpart also does not apply to administrative action by the Department of Education, based on any alleged violation of—

(1) Title VI of the Civil Rights Act of 1964, which is governed by 34 CFR Parts 100 and 101;

(2) Title IX of the Education Amendments of 1972 (relating to sex discrimination), which is governed by 34 CFR Part 106; or

(3) The Family Educational Rights and Privacy Act of 1974 (§ 438 of the General Education Provisions Act, as amended) which is governed by 34 CFR Part 99.

(20 U.S.C. 1078-2, 1080, 1082, 1094)

§ 683.101 Definitions of terms used in this subpart.

Designated ED official: An official of the United States Department of Education to whom the Secretary has delegated the responsibility for initiating and pursuing limitation, suspension, and termination procedures.

Limitation: The continuation of a lender's eligibility, subject to compliance with special conditions set by the Secretary as a result of a limitation or termination proceeding.

Presiding officer: An impartial person who has no prior involvement with the facts giving rise to a limitation, suspension or termination proceeding, and who is selected by the Secretary to conduct a hearing.

Suspension: The removal of a lender's eligibility for a specified period of time or until the lender meets certain requirements.

Termination: The removal of a lender's eligibility for an indefinite period of time.

(20 U.S.C. 1078-2, 1080, 1082, 1094)

§ 683.102 Effect on prior participation.

Limitation, suspension, or termination proceedings do not affect a lender's responsibilities, or rights to benefits and claim payments, that are based on the lender's prior participation in the program, except as provided in § 683.109.

(20 U.S.C. 1078-2, 1080, 1082, 1094)

§ 683.103 Informal compliance procedure.

(a) If the Secretary receives a complaint, or other information that the Secretary believes to be reliable, indicating that a lender may be violating applicable laws, regulations, special arrangements, agreements, or limitations, the Secretary may give the lender a reasonable opportunity to—

(1) Respond to the complaint or other information;

(2) Show that the matter has been corrected; or

(3) Submit an acceptable plan to correct the violation and prevent its recurrence.

(b) Limitation, suspension or termination procedures need not be delayed during the informal compliance procedure under paragraph (a) if the Secretary believes—

(1) The delay would harm the Federal PLUS program; or

(2) The informal compliance procedure would not correct the alleged violation.

(20 U.S.C. 1078-2, 1080, 1082, 1094)

8683.104 Emergency action.

(a) The Secretary, through a designated ED official, may take emergency action to stop issuing insurance commitments to a lender if the designated ED official—

(1) Receives information, which the official believes to be reliable, that the lender is violating applicable laws, regulations, special arrangements, agreements, or limitations;

(2) Determines that immediate action is necessary to prevent the likelihood of substantial losses by the Federal Government, students or parents; and

(3) Determines that the likelihood of loss outweighs the importance of fol-

lowing the procedures for limitation, suspension, or termination.

(b) The designated ED official begins an emergency action by notifying the lender, by certified mail with return receipt requested, of the action and the reasons for it. The effective date of the action is the date that the notice is mailed.

(c) An emergency action does not exceed 30 days unless a limitation, suspension, or termination proceeding is begun before that period expires. In that event, the emergency action may be extended until the completion of the proceeding, including any appeal that may be made to the Secretary.

(d) If a limitation, suspension, or termination proceeding is begun, the Secretary provides the lender, upon request, an opportunity to demonstrate that the emergency action is unwarranted.

(20 U.S.C. 1078-2, 1080, 1082, 1094)

§ 683.105 Suspension proceedings.

(a) *Scope and consequences.* A suspension removes a lender's eligibility under the Federal PLUS program for a period of time. That period does not exceed 60 days from the effective date of the suspension unless—

(1) The lender and the designated ED official agree to an extension, if the lender has not requested a hearing; or

(2) The designated ED official begins a limitation or termination proceeding.

(b) *Procedure.* (1) The designated ED official begins a suspension proceeding by sending a notice to the lender by certified mail with return receipt requested. In the notice, the designated ED official—

(i) Informs the lender of the Secretary's intent to suspend the lender's eligibility, cites the consequences of that action, and identifies the alleged violations on which that action is based;

(ii) Specifies the proposed effective date of the suspension, which is at least 20 days after the date of mailing of the notice of intent;

(iii) Informs the lender that the suspension will not take effect on the date specified in the notice if the designated ED official receives, at least 5 days before that date, a request for a hearing or written material showing why the suspension should not take place; and

(iv) Asks the lender to correct voluntarily the alleged violation(s).

(2) If the lender does not request a hearing but submits written material the designated ED official considers that material and notifies the lender that—

(i) The proposed suspension is dismissed; or

(ii) The suspension is effective as of a specified date.

(3) If the lender requests a hearing within the time specified in paragraph (b)(1)(iii) of this section, the designated ED official sets the date and place. The date is at least 15 days after the designated ED official receives the request. No suspension takes place until a hearing is held.

(4) A presiding officer conducts the hearing and a written record of the hearing is made.

(5) At the hearing, the presiding officer shall consider any written material presented before the hearing and all other evidence presented during the hearing.

(6) If the presiding officer concludes that the suspension is warranted, the presiding officer issues an initial decision suspending the lender's eligibility.

(7) The Secretary reviews the initial decision of the presiding officer and issues a final decision. The Secretary adopts the initial decision unless it is clearly unsupported by the evidence.

(c) Notice of the suspension is promptly mailed to the lender. The suspension takes effect either on the date that the initial decision notice is mailed to the lender or on the original proposed effective date stated in the notice of intent, whichever is later.

(d) If the designated ED official begins a limitation or termination proceeding before the suspension period ends, the suspension period may be extended until the completion of that proceeding, including any appeal to the Secretary.

(20 U.S.C. 1078-2, 1080, 1082, 1094)

§ 683.106 Limitation or termination proceedings.

(a) *Scope and consequences.* A limitation or termination either—

(1) Limits in a specified manner the eligibility of a lender to participate in the Federal PLUS program; or

(2) Removes the eligibility of a lender to make any new Federal PLUS loans.

(b) *Procedure.* (1) The designated ED official begins a limitation or termination proceeding, whether or not a suspension proceeding has begun, by sending the lender a notice by certified mail with return receipt requested. In the notice, the designated ED official—

(i) Informs the lender of the Secretary's intent to limit or terminate the lender's eligibility, cites the consequences of that action, identifies the alleged violations on which that action is based, and in the case of a limitation states the limits which may be imposed;

(ii) Specifies the proposed effective date of the limitation or termination, which is at least 20 days after the date of mailing of the notice of intent;

(iii) Informs the lender that the limitation or termination will not take effect on the date specified in the notice if the designated ED official receives, at least 5 days before that date, a request for a hearing or written material showing why the limitation or termination should not take place; and

(iv) Asks the lender to correct voluntarily the alleged violation(s).

(2) If the lender does not request a hearing but submits written material, the ED official considers that material and notifies the lender that either—

(i) The proposed action is dismissed;

(ii) Limitations are effective as of a specified date; or

(iii) The termination is effective as of a specified date.

(3) If the lender requests a hearing within the time specified in paragraph (b)(1)(iii) of this section, the designated ED official sets the date and place. The date is at least 15 days after the designated ED official receives the request. No proposed limitation or termination takes place until after a hearing is held.

(4) A presiding officer conducts the hearing, and a written record of the hearing is made.

(5) At the hearing the presiding officer shall consider any written material presented before the hearing and all other evidence presented during the hearing.

(6) If the presiding officer concludes that limitation or termination is warranted, the presiding officer issues an initial decision that limits or terminates the lender's eligibility.

(7) If a termination action is brought against a lender, and the presiding officer believes a limitation to be more appropriate, the presiding officer may issue a decision imposing one or more limitations on a lender rather than terminating its eligibility.

(c) *Expedited hearings.* With the approval of the presiding officer and the consent of the designated ED official and the lender, any time schedule specified in this section may be shortened.

(20 U.S.C. 1078-2, 1080, 1082, 1094)

§ 683.107 Initial and final decisions.

(a) The presiding officer issues an initial decision in any limitation, suspension, or termination proceeding based on findings of fact and conclusions of law. The presiding officer shall base findings of fact only on evidence considered at the hearing and matters given official notice. The presiding officer's initial decision is mailed promptly to the lender.

(b) In a suspension proceeding, the Secretary reviews the presiding officer's initial decision and issues a final decision. The Secretary adopts the initial decision unless it is clearly unsupported by the evidence.

(c)(1) In a limitation or termination proceeding, the presiding officer's initial decision automatically becomes the Secretary's final decision 20 days after it is issued unless, within that 20-day period, the lender or designated ED official appeals the decision to the Secretary.

(2) Within a period of time specified by the Secretary the appealing party may submit additional written material including exceptions to the initial decision, proposed findings and conclu-

sions, and supporting briefs and statements. The Secretary sets a time by which the opposing party shall respond. Any party submitting material to the Secretary shall provide a copy to each party that participated in the hearing.

(3) The presiding officer's initial decision limiting or terminating the lender's eligibility does not take effect pending the appeal, unless the Secretary determines that a stay of the effective date would seriously and adversely affect the Federal PLUS program, students or parents.

(4) After an appeal the Secretary issues a final decision affirming, modifying, or reversing the initial decision, including a statement of reasons for the Secretary's decision.

(20 U.S.C. 1078-2, 1080, 1082, 1094)

§ 683.108 Verification of mailing dates.

The Department of Education's mailing dates are verified by the original receipts from the United States Postal Service.

(20 U.S.C. 1078-2, 1080, 1082, 1094)

§ 683.109 Effect of suspension or termination proceeding.

After the effective date of a lender's suspension or termination, the Secretary does not insure new loans made by that lender. Also, the Secretary may prohibit the lender from making further disbursements on a loan for which an insurance commitment already has been issued.

(20 U.S.C. 1078-2, 1080, 1082, 1094)

§ 683.110 Limitation.

A limitation may include—

(a) A limit on the number or total amount of Federal PLUS loans that a lender may make, purchase, or hold;

(b) A limit on the number or total amount of Federal PLUS loans a lender may make to students or parents on behalf of students at a particular school; and

(c) Other reasonable requirements or conditions.

(20 U.S.C. 1078-2, 1080, 1082, 1094)

§ 683.111 Reimbursements, refunds, and offsets.

(a) The Secretary, designated ED official, or presiding officer may require a lender to take reasonable corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(b) The corrective action may include payment to the Secretary or to designated recipients of any funds that the lender improperly received, withheld, disbursed, or caused to be disbursed. Corrective action may, for example, relate to—

(1) Special allowance and other claims paid by the Secretary; or

(2) Required refunds to students who receive or on whose behalf parents receive PLUS loans, in the case of a school lender.

(c) If a final decision requires a lender to reimburse or make any payment to the Secretary, the Secretary may offset these claims against any benefits or claims due the lender.

(20 U.S.C. 1078-2, 1080, 1082, 1094)

§ 683.112 Reinstatement after termination.

(a) A lender whose eligibility has been terminated may file a request for reinstatement of its eligibility. This request may not, however, be filed within 18 months of the effective date of the termination.

(b) The reinstatement request must be in writing and must show that the lender has corrected the violation(s) on which its termination was based and meets all qualifications for eligibility.

(c) A school lender whose eligibility as a participating school has been terminated under 34 CFR Part 668 may not be reinstated as a Federal PLUS program lender until it is reinstated as a participating school. However, the school may request reinstatement as both a school and a lender at the same time.

(d) The Secretary, within 60 days of receiving the reinstatement request either—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to limitations.

(e)(1) If the Secretary denies the request or establishes other limitations, the lender, upon request, will be granted an opportunity, including a meeting, to show why its eligibility should be fully reinstated.

(2) A lender that is reinstated with limitations may participate in the Federal PLUS program under the limitations pending this appeal.

(20 U.S.C. 1078-2, 1080, 1082, 1094)

§ 683.113 Removal of limitation.

(a) A lender may request removal of the Secretary's limitation imposed under these regulations no sooner than 12 months after the effective date of the limitation.

(b) The request must be in writing and show that the lender has corrected the violation(s) on which the limitation was based.

(c) The Secretary within 60 days of receiving the request, either—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to other limitations.

(d) If the Secretary denies the request or establishes other limitations, the lender, upon request, will be granted an opportunity, including a meeting, to show why its eligibility should be fully reinstated.

(e) The lender may participate in the Federal PLUS program under the limitations pending this appeal.

(20 U.S.C. 1078-2, 1080, 1082, 1094)

APPENDIX A—STANDARDS FOR ACCEPTABLE REFUND POLICIES BY PARTICIPATING SCHOOLS

For purposes of § 683.87(b) the Secretary considers guidelines VI, VII, and VIII of the following document to be acceptable elements of a fair and equitable school refund policy. The document, which is reproduced in its entirety for the convenience of the reader, was developed by the National Association of College and University Business Officers. The document does not affect a school's obligation to comply with other Department of Education regulations.

Policy Guidelines for Refund of Student Charges

(I) *The governing board of the institution should review and approve the schedule of all institutional charges and refund policies applicable to students.* The pricing of services and refund policies have important consequences to students, parents, the institution, and society; as such, pricing and refund policies should receive board attention and approval.

(II) *Institutions should seek consumer views in the process of establishing and amending charge and refund structures.* Decisions regarding institutional funds are ultimately the sole responsibility of the institution's legally designated fund custodians. However, consumer concerns do affect decision-making, and involving consumers in decision-making related to charges and refunds is a desirable approach for assessing student needs and creating public awareness of institutional requirements.

(III) *Institutions should publish a current schedule of all student charges, a statement of the purpose for such charges, and related refund policies, and have them readily available free of charge to current and prospective students.* Students and parents have a right to know what charges they will be expected to pay and what will or will not be refunded. They also have a right to know what services accompany payment of the charges. Informational materials published free for students and prospective students are ideal for this purpose.

(IV) *Institutions should clearly designate all optional charges as "optional" in all published schedules and related materials. Clearly, charges that are mandatory and charges that are optional must be plainly differentiated in all printed materials.* Also, the institution should state clearly in its schedule if a charge is optional for some students but required for others. Statements accompanying the schedule may include institutional endorsements of the optional program or service.

(V) *Institutions should clearly identify charges and deposits that are nonrefundable as "nonrefundable" on all published schedules.* Institutions determine on an individual basis which of their charges are refundable or non-refundable. In general, admission fees, application fees, laboratory fees, facility and student activity fees, and other similar charges are not refundable. These fees are generally charged to cover the cost of activities such as processing applications and other student information, reserving academic positions, and establishing the limits of institutional programs and services,

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reserving housing space, and otherwise setting the fixed costs of the institution for the coming academic periods.

Institutions determine on an individual basis which of their deposits are refundable or nonrefundable. Some deposits will be nonrefundable or will be credited to a student's account (e.g., tuition deposits). Others are refundable according to the terms of the deposit agreement (e.g., deposits for breakage).

(VI) *Institutions should refund housing rental charges, less a deposit, so long as written notification of cancellation is made prior to a well-publicized date that provides reasonable opportunity to make the space available to other students.* Written notification on or before the beginning of the term of the contract is necessary to ensure utilization of housing units. During the term of the contract, room charges are generally not refundable. However, based on the program offered, space availability, debt service requirements, State and local laws, and other individual circumstances, institutions may provide for some more flexible refund guideline for housing.

(VII) *Institutions should refund board charges in full, less a deposit, if written notification of cancellation is made prior to a well-publicized date that falls on or before the beginning of the term of the contract. Subsequent board charges should be refunded on a pro rata basis less a withdrawal fee.* It is reasonable to make a refund for those goods and services not consumed. The withdrawal charge should reflect that portion of an institution's costs that are fixed for the term of the contract.

(VIII) *The institutional tuition refund policy for an academic period should include the following minimum guidelines:*

A. *The institution should refund 100 percent of the tuition charge, less a deposit fee, if written notification of cancellation is made prior to a well-publicized date that falls on or before the first day of classes.*

B. *The institution should refund at least 25 percent of the tuition charge if written notification of withdrawal is made during the first 25 percent of the academic period.* It is reasonable to refund tuition charges on a sliding scale if a student withdraws from his or her program prior to the end of the first 25 percent of the academic period unless State law imposes a more restrictive refund policy.

(IX) *The institution should assess no penalty charges where the institution, as opposed to the student, is in error. The institution should make refunds in cases where the institution has assessed charges in error.* Penalty charges, such as those involving late registration fees, change of schedule fees, late payment fees, should not be assessed if it is determined that the student is not responsible for the action causing the charge to be levied.

(X) *Institutions should advise students that any notifications of withdrawal or cancellation and requests for refund must be in writing and addressed to the designated institutional officer.* A student's written notification of withdrawal or cancellation and request for a refund provides an accurate record of transactions and also ensures that such request will be processed on a timely basis. Acceptance of oral requests is an undesirable practice.

(XI) *Institutions should pay or credit refunds due on a timely basis.* The definition of "timely basis" should include the time required to process a formal student request for refund, to process a check if required, and to allow for mail delivery, when necessary. If an institution has a policy that a refund of an inconsequential amount will not be made, this policy should be published in part of all materials related to refund policies.

(XII) *Institutions should publicize, as a part of their dissemination of information on charges and refunds, that an appeals process exists for students or parents who feel that individual circumstances warrant exceptions from published policy. The informational materials should include the name, title, and address of the official responsible.* Although charges and refund policies should reflect extensive consideration of student and institutional needs, it will not be possible to encompass in these structures the variety of personal circumstances that may exist or develop. Institutions are required to provide a system of due process to their students, and charges and refund policies are legitimately a part of that process. Students and parents should be informed regularly of procedures for requesting information concerning exceptions to published policies.

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AUTHORITY: Section 411 of the Higher Education Act of 1965 as added by Section 131(b) of Public Law 92-318, 86 Stat. 247-251 as amended (20 U.S.C. 1070a), unless otherwise noted.

Subpart A—Scope, Purpose and General Definitions

SOURCE: 45 FR 86395, Dec. 30, 1980, unless otherwise noted.

§ 690.1 Scope and purpose.

The Pell Grant Program awards grants to help financially needy students meet their costs of postsecondary education.

(20 U.S.C. 1070a)

§ 690.2 General definitions.

The following definitions are set forth in Subpart A of the Student Assistance General Provisions, 34 CFR Part 668.

Ability to Benefit; Institution of higher education (including Public or Private nonprofit institution of higher education, proprietary institution of higher education, and postsecondary vocational institution); one-year training program; recognized equivalent of a high school diploma; and six-month training program.

Other definitions used in this part are:

Academic year: (1) A period of time in which a full-time student is expected to complete the equivalent of at least 2 semesters, 2 trimesters or 3 quarters at institutions using credit hours; or

(2) At least 900 clock hours of training for each program at institutions using clock hours.

(20 U.S.C. 1088)

Act: Title IV-A-1 of the Higher Education Act (HEA) of 1965, as amended.

Award year: The period of time between July 1 of one year and June 30 of the following year.

Clock hour: The equivalent of—

(1) A 50 to 60 minute class, lecture or recitation; or

(2) A 50 to 60 minute faculty supervised laboratory, shop training, or internship.

College Work-Study (CW-S) Program: The program of part-time employment authorized by Title IV-C of the Higher Education Act.

Eligibility index: Expected family contribution.

Enrolled: Completion of registration requirements at the institution a student is attending.

Enrollment status: At those institutions using semesters, trimesters, quarters, or other academic terms and measuring progress by credit hours, enrollment status equals a student's credit hour work load categorized as either full-time, three-quarter-time, or half-time.

Full-time student: An enrolled student who is carrying a full-time academic work load (other than by correspondence) as determined by the institution and which is applicable to all students enrolled in a particular program. However, the institution's full-time standard must equal or exceed one of the following minimum requirements:

(1) 12 semester hours or 12 quarter hours per academic term in those institutions using standard semester, trimester or quarter hour systems;

(2) 24 semester hours or 36 quarter hours per academic year for institutions using credit hours to measure progress but not using semester, trimester or quarter systems, or the prorated equivalent for programs of less than one academic year;

(3) 24 clock hours per week for institutions using clock hours;

(4) In those institutions using both credit and clock hours, if the sum of

the following fractions is equal to or greater than one:

number of credit hours per term divided by 12 plus number of clock hours per week divided by 24

(5) A series of courses or seminars which equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks; or

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic work-load of a full-time student.

(20 U.S.C. 1088(c)(2))

Guaranteed Student Loan (GSL) Program: The student loan program authorized by title IV-B of the Higher Education Act.

Half-time student. (1) An enrolled student who is carrying a half-time academic work load—as determined by the institution—which amounts to at least half the work load of the appropriate minimum requirement outlined in the definition of a full-time student. (See definition of full-time student.)

(2) A student enrolled solely in a program of study by correspondence who is carrying a work load of at least 12 hours or preparation of work per week. However, regardless of the work load, no student enrolled solely in correspondence study will be considered more than a half-time student.

National Defense Student Loan (NDSL) Program: The student loan program authorized by Title II of the National Defense Education Act.

National Direct Student Loan (NDSL) Program: The student loan program authorized by Title IV-E of the Higher Education Act.

Parent Loans for Undergraduate Students (PLUS): The Parent Loan Program authorized by Title IV-B of the Higher Education Act.

Payment schedule: (1) A table showing a full-time student's Scheduled Pell Grant for a given award year. This table, published by the Secretary, is based on—

(i) The Expected Family Contribution.

(ii) Attendance costs as defined in Subpart E; and

(iii) The amount of funds available for making Pell Grants.

(2) The Payment Schedule also includes the Disbursement Schedules which are tables showing the grant amounts three-quarter and half-time students would receive for an academic year.

Scheduled Pell Grant: The amount of a Pell Grant which would be paid to a full-time student for a full academic year.

Secretary: The Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

State Student Incentive Grant (SSIG) Program: The grant program authorized by Title IV-A-3 of the Higher Education Act.

Student Eligibility Report (SER): A report provided to an applicant showing the amount of his or her expected family contribution.

Supplemental Educational Opportunity Grant (SEOG) Program: The grant program authorized by Title IV-A-2 of the Higher Education Act.

Three-quarter-time student: An enrolled student who is carrying a three-quarter-time academic work load—as determined by the institution—which amounts to at least three quarters of the work load of the appropriate minimum requirement outlined in the definition of a full-time student. (See defintion of full-time student.)

Undergraduate student: A student enrolled in an undergraduate course of study at an institution of higher education who:

(1) Has not been awarded a baccalaureate or first professional degree; and

(2) Is in an undergraduate course of study which usually does not exceed 4 academic years, or is enrolled in a 5 academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first 4 academic years of that program.

(20 U.S.C. 1070a unless otherwise noted.)

§ 690.3 Special terms.

(a) Eligible program: An undergraduate program of education or training which—

(1) Admits as regular students only persons who—

(i) Have a high school diploma.

(ii) Have a General Education Development Certificate (G.E.D) or a State certificate received after passing a State-authorized examination which the State recognizes as the equivalent of a high school diploma, or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located, and have the ability to benefit from the education or training offered; and

(2)(i) Leads to a bachelor, associate or undergraduate professional degree,

(ii) Is at least a two-year program which is acceptable for full credit toward a bachelor degree,

(iii) Is at least a 1 year program leading to a certificate or degree, which prepares students for gainful employment in a recognized occupation. (A 1-year program is defined in 34 CFR Part 668, Subpart A), or

(iv) Is, for a proprietary or postsecondary vocational institution, at least a six-month program leading to a certificate or degree, which prepares students for gainful employment in a recognized occupation. (A six-month program is defined in 34 CFR Part 668, Subpart A).

(b) *An eligible program of study by correspondence:* An undergraduate program of education or training which must be designed to require at least 12 hours of preparation a week.

(c) *Regular student:* A person who enrolls in an eligible program at an institution of higher education for the purpose of obtaining a degree or certificate.

(d) *Payment period for an institution that uses the Regular Disbursement System but does not use academic terms.*

(1) An institution participating in the Pell Grant program under the Regular Disbursement System (RDS institution) that does not use semesters, trimesters, quarters, or other academic terms must have at least two payment periods for each academic year, or for each program which is less than an academic year.

(2) For a fulltime student whose educational program is one academic year—

(i) The first payment period is the period of time in which the student completes the first half of his or her academic year (in credit or clock hours), and

(ii) The second payment period is the period of time in which the student completes the second half of that academic year.

(3) For a full-time student whose educational program is more than one academic year, the first and second payment periods shall be calculated under paragraph (d)(2) of this section. For subsequent academic years, or fractions of academic years, each payment period shall be the period of time in which the student completes—

(i) One-half of the academic year, or

(ii) The remaining hours in the student's educational program, which ever is to be completed first.

(4) For a full-time student whose educational program is LESS than an academic year—

(i) The first payment period is the period of time in which the student completes the first half of his or her educational program (in credit or clock hours), and

(ii) The second payment period is the period of time in which the student completes the second half of that educational program.

(5) The payment period for an eligible part-time student shall be calculated as follows:

(i) Determine the length of time it would take a full-time student in the program to complete one academic year or a program of less than one academic year, as appropriate.

(ii) The first payment period is the period of time in which the part-time student completes half the work (in credit or clock hours) he or she is scheduled to complete in the period referred to in paragraph (d)(5)(i) of this section.

(iii) The second payment period begins when the first payment period ends and ends when the student completes the other half of the work that he or she was scheduled to complete in the period referred to in paragraph (d)(5)(i) of this section.

(iv) Each subsequent payment period begins when the previous period ends and ends when the part-time student completes—

(A) Half the work he or she is scheduled to complete during the period of time referred to in paragraph (d)(5)(i) of this section, or

(B) The remaining hours of his or her educational program whichever is completed first.

(6) If an RDS institution chooses to have more than two payment periods in an academic year or in a program of less than an academic year, the rules set forth in paragraphs (d)(2) through (d)(5) of this section shall be modified to reflect the number of payment periods. For example, if an institution chooses to have three payment periods for an academic year, each payment period shall correspond, for a full-time student, to one-third of the academic year.

(e) *Payment period for an institution using the Regular Disbursement System that uses academic terms.*

(1) For an RDS institution that uses semesters, trimesters, quarters or other academic terms, the payment period is the semester, trimester, quarter or other academic term.

(2) If a student's progress is measured in clock hours, a student may not be paid for a subsequent payment period until he or she finishes the hours of the previous payment period for which the student has already been paid.

(f) *Payment period for an institution using the Alternate Disbursement System.* A payment period for an institution participating in the Pell Grant program under the Alternate Disbursement System (ADS institution) shall be calculated as follows:

(1) If an ADS institution uses semesters, trimesters, quarters or other academic terms and measures progress in credit hours, the payment period is the semester, trimester, quarter or other academic term.

(2) If an ADS institution measures progress in clock hours, or measures progress in credit hours but does not use academic terms, it shall have at least two payment periods. The payment periods shall be calculated as follows:

(i) If the student's academic year is within one award year and the student's educational program is at least one academic year—

(A) The first payment period is the period of time in which the student completes the first half of his or her academic year, and

(B) The second payment period is the period of time in which the student completes the second half of his or her academic year.

(ii) If the student's academic year is NOT within one award year or the student's educational program is LESS than a full academic year—

(A) The first payment period is the period of time in which the student completes the first half of the hours he or she is scheduled to complete within the award year, and

(B) The second payment period begins when the first payment period ends and ends when the student completes all hours he or she was scheduled to complete between the beginning of the second payment period and June 30.

(iii) A student with incompleted hours for the second payment period of any award year may complete them during the following award year. In this case, if the student's educational program is more than an academic year, the first payment period of the new award year begins when the student finishes all carried over hours for which he or she was paid.

(20 U.S.C. 1070a)

§ 690.4 Eligible student.

(a) A student is eligible to receive a Pell Grant if the student—

(1) Is a regular student.

(2) Is enrolled as at least a half-time undergraduate student at an institution of higher education;

(3) Is enrolled in an eligible program as a regular student, as defined in § 690.3; and

(4)(i) Is a U.S. citizen or National,

(ii) Is a permanent resident of the U.S.,

(iii) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident, or

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands, or the Northern Mariana Islands.

(b) A member of a religious order, community, society, agency or organization who is pursuing a course of study in an institution of higher education will be considered as having an expected family contribution of at least $2,401 if that religious order—

(1) Has a primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3)(i) Has directed the member to pursue the course of study, or

(ii) Provides subsistence support to its members.

(20 U.S.C. 1070a)

§ 690.5 Duration of student eligibility.

A student is eligible to receive a Pell Grant for the period of time required to complete the first undergraduate baccalaureate course of study being pursued by that student.

(20 U.S.C. 1070a)

§ 690.6 Pell Grant payments from more than one institution.

A student will not be entitled to receive Pell Grant payments concurrently from more than one institution or from the Secretary and an institution.

(20 U.S.C. 1070a)

§ 690.7 Institutional eligibility.

(a)(1) An institution of higher education is eligible to participate in the Pell Grant Program if it—

(i) Meets the appropriate definition set forth in 34 CFR 668, Subpart A,

(ii) Enters into a program participation agreement with the Secretary, and

(iii) Complies with that agreement and with the applicable provisions of 34 CFR Part 668 of this title, "Student Assistance General Provisions."

(2) If an institution becomes eligible during an award year, a student enrolled and attending that institution will be eligible to receive a Pell Grant for the payment period during which the institution became eligible and any subsequent payment period.

(b)(1) An institution of higher education becomes ineligible to participate in the Pell Grant Program if it no longer meets the applicable definition set forth in Part 668 of this title, or if its eligibility is terminated under the procedures set forth for terminating institutions in Part 668 of this title.

(2) If an institution becomes ineligible during an award year, an eligible student who was attending the institution and who submitted a valid SER to the institution, or to the Secretary if the institution participates under the Alternate Disbursement System (ADS), before the date the institution became ineligible, will be paid a Pell Grant for that award year for—

(i) The payment period that the student completed before the institution became ineligible, and

(ii) The payment period in which the institution became ineligible.

(c) An institution participating in the program under ADS which becomes ineligible must provide the Secretary with the name and enrollment status of each student who applied for and was determined eligible for a Pell Grant who was attending the institution when its eligibility was terminated.

(d) An institution participating in the program under the Regular Disbursement System which becomes ineligible must supply to the Secretary—

(1) The name and enrollment status of each eligible student who, during the award year, submitted a valid SER to the institution before it become ineligible.

(2) The amount of funds paid to each Pell Grant recipient for that award year.

(3) The amount due to each student eligible to receive a Pell Grant through the end of the payment period; and

(4) An accounting of the Pell Grant expenditures for that award year to the date of termination.

(20 U.S.C. 1070a)

§ 690.8 Consortium agreements.

(a) A consortium agreement is a written agreement between at least two institutions which enables an enrolled student in an eligible program at one institution to take courses at other institutions which apply towards his or her certificate or degree at the first institution.

(b) If two eligible institutions have entered into a consortium agreement, the institution at which the student is enrolled and expects to receive a degree or certificate calculates and pays the student's Pell Grant. However, if the student is attending an institution *other* than the institution at which he or she is enrolled and expects to receive a degree, the institution at which the student is actually in attendance may pay the student's Pell Grant if both institutions agree in writing to that arrangement.

(c) The institution which calculates and pays the student a Pell Grant must take into account courses taken by the student at both institutions in determining the student's enrollment status and cost of attendance.

(20 U.S.C. 1070a)

§ 690.9 Determination of enrollment status under special circumstances.

(a) Non-credit remedial courses.

(1) When calculating a student's enrollment status, neither the institution nor the Secretary may count any course in a program of instruction leading to a high school diploma or the recognized equivalent of a high school diploma, even if the course is necessary to enable the student to complete the degree or certificate program.

(2) Except as provided in paragraph (a)(1) of this section, in determining a student's enrollment status, the institution and Secretary will include any non-credit remedial course in which the student is enrolled. If a non-credit remedial course is not measured by clock or credit hours, the institution must determine the equivalent number of clock or credit hours which should be included for that work. A non-credit remedial course is a course of study for which no credit is given toward a certificate or degree and which is designed to increase the ability of the student to pursue an undergraduate course of study leading to that certificate or degree.

(b) Combination of regular and correspondence study.

(1) If—in addition to regular coursework—an eligible student takes correspondence courses from either his or her own institution or another institution under a consortium agreement with the student's institution, the correspondence work may be included in determining the student's enrollment status.

(2) Except as noted in subparagraph (3), the correspondence work that will be included is that amount of work which—

(i) Applies toward the student's degree or certificate or is remedial work necessary for the student to proceed in his or her course of study;

(ii) Is completed within the period of time required for regular course work; and

(iii) Does not exceed the amount of the student's regular course work.

(3) Notwithstanding subparagraph (b)(2)(iii), a student who would be a half-time student based solely on his or her correspondence work will be considered a half-time student unless the calculation in subparagraph (b)(2) indicates a greater status.

(20 U.S.C. 1070a)

§ 690.10 Administrative cost allowance to participating schools.

(a) The Secretary will pay to each participating institution an amount equal to $5 per award year for each student who receives a Pell Grant at that institution for that year.

(b) All funds an institution receives under this section must be used solely for the institution's costs of administering the Pell Grant, Supplemental Educational Opportunity Grant, College Work-Study and National Direct Student Loan programs.

(20 U.S.C. 1096)

Subpart B—Application Procedures for Determining Expected Family Contribution

Source: 45 FR 86398, Dec. 30, 1980, unless otherwise noted.

§ 690.11 Application.

(a) As the first step to receiving a Pell Grant, a student applies on an approved form to the Secretary to have his or her expected family contribution determined. Facsimile copies of this form are not acceptable.

(b) The student, and where relevant, the student's parents or spouse, must submit information that is accurate and complete as of the date the application is signed.

(c) The address provided by the student must be his or her residence and not the address of the school, unless the student resides at the school.

(20 U.S.C. 1070a)

§ 690.12 Certification of information.

(a) The applicant, and where relevant the applicant's parents or spouse, must provide (if requested by either the Secretary or the school) information or documents, including a copy of Federal Income Tax Returns, necessary to verify the accuracy of the information provided.

(b) Failure to provide the requested documentation may make the applicant ineligible to receive a Pell Grant.

(20 U.S.C. 1070a)

§ 690.13 Deadline for filing applications.

For each award year the Secretary will establish application filing deadlines for determining expected family contributions.

(20 U.S.C. 1070a)

§ 690.14 Notification of expected family contribution.

The Secretary will send to each eligible applicant a "Student Eligibility Report" (SER) which states the amount of the applicant's expected family contribution and information used in that computation.

(20 U.S.C. 1070a)

§ 690.15 Applicant's request for recomputation of expected family contribution because of clerical or arithmetic error.

(a) An applicant may request a recomputation of his or her expected family contribution if he or she believes a clerical or arithmetic error has occurred, or if the information submitted was inaccurate when the application was signed.

(b) A request for recomputation must be made on an approved form and must be received by the Secretary no later than the annual deadline unless the recomputation is necessary because of a request made by the Secretary to verify information.

(20 U.S.C. 1070a)

§ 690.16 Request for recomputation of expected family contribution because of extraordinary circumstances.

In filing an application to have an expected family contribution determined, an applicant may provide financial information relating to the tax year immediately following the base year if the conditions in §§ 690.39 or 690.48 apply.

(20 U.S.C. 1070a)

Subpart C—Expected Family Contribution for a Dependent Student

Source: 47 FR 738, Jan. 6, 1982, unless otherwise noted.

§ 690.31 Indicators of financial strength.

"Expected family contribution" for a dependent student means the amount that the student and his or her family may reasonably be expected to contribute toward the cost of his or her education for an award period. Each of the following elements of financial strength will be considered in determining the family contribution for a dependent student;

(a) The effective incomes of (1) the student and his or her spouse, and (2) the student's parent(s).

(b) The number of family members in the household of the student's parent(s).

(c) The number of family members in the household of the student's parent(s) who are enrolled in, on at least a half-time basis, a program of postsecondary education.

(d) The assets of (1) the student and his or her spouse, and (2) the student's parent(s).

(e) The marital status of the student.

(f) The unusual medical expenses of the student's parents.

(g) The additional expenses incurred when both parents of the student are employed or when a family is headed by a single parent who is employed.

(h) The tuition paid by the student's parents for dependent children, other than the student, who are enrolled in an elementary or secondary school.

(Section 124 of Pub. L. 97-92)

§ 690.32 Special definitions.

For purposes of this subpart:

"Assets" means cash on hand, including amounts in checking and savings accounts, trusts, stocks, bonds, other securities, real estate, home (if owned), income producing property, business equipment, and business inventory. However, for Native American students, the following shall not be considered as an asset of the student or his or her family in determining the expected family contribution:

(a) Any property received under the Distribution of Judgment Funds Act (25 U.S.C. 1401, et seq.), the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.), or the Maine Indians Claims Settlement Act (25 U.S.C. 1721, et seq.).

(b) Any property that may not be sold or encumbered without the consent of the Secretary of Interior, or

(c) Any other property held in trust for the student or his family by the United States Government.

"Business assets" means property that is used in the operation of a trade or business, including real estate, inventories, buildings, machinery and other equipment, patents, franchise rights, and copyrights.

"Dependent of the student's parents" means:

(a) The student,

(b) Any of the student's dependent children,

(c) Dependent children of the student's parents including those children who have been determined as to be "dependent students" when applying for Title IV student assistance, and

(d) Other persons (except the student's spouse) who live with and receive more than one-half of their support from the parents and will continue to receive more than half of their support from the parents during the 1982-83 award year.

"Dependent student" means any student who does not qualify as an independent student as defined in § 690.42(a).

"Dependent student offset" means (a) an offset from the effective income of a dependent student and his or her spouse to meet the basic needs of the student and spouse, plus (b) the portion of negative parental discretionary income that will not be used to offset the normal contribution from parental assets.

"Effective family income" and "effective income of the student and spouse" are described in §§ 690.33 and 690.33a respectively.

"Employment expense offset" means an allowance to meet expenses relating to employment when both parents are employed or when a parent qualifies as a surviving spouse or as head of a household under section 2 of the Internal Revenue Code.

"Family size offset" means an allowance to meet the subsistence expenses of a family, including food, shelter, clothing, and other basic needs. This offset is derived from the "Weighted Average Thresholds at the Low Income Level," as developed by the Social Security Administration.

"Farm assets" means any property owned and used in the operation of a farm for profit, including real estate, livestock, livestock products, crops, farm machinery, and other equipment inventories. A farm is not considered to be operated for profit if crops or livestock are raised mainly for the use of the family, even if some income is derived from incidental sales.

"Federal income tax" means (a) the tax on income paid to the U.S. Government under chapter 2 of the Internal Revenue Code, or (b) the tax on income paid to the Governments of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands under the laws applicable to those jurisdictions, or (c) the comparable taxes paid to the central government of a foreign country.

"Legal guardian" means an individual who has been appointed by a court to be a legal guardian of a person and who is specifically required by the court to use his or her own financial resources to support that person.

"Local income tax" means the tax on income paid to a town, city, county, or other local municipality.

"Medical expenses" means unreimbursed medical and dental expenses, except premiums for medical insurance, that may be deducted under section 213 of the Internal Revenue Code that were paid in 1981, unless the student files an application with the Secretary under the provisions of § 690.39. In that case the expenses reported are those paid in 1982.

"Net assets" means the current market value at the time of application of the assets included in the definition of "assets" minus the outstanding liabilities (indebtedness) against those assets.

"Parent" means the student's mother, father or legal guardian. An adoptive parent is considered to be the student's mother or father.

"State income tax" means the tax on income paid to one or more of the 50 states of the United States.

(Section 124 of Pub. L. 97-92)

§ 690.33 Effective family income.

(a) Effective family income is the annual adjusted family income minus the Federal income taxes paid or payable for the year that adjusted gross income is used in the calculation of the student's Pell Grant.

(b) "Annual adjusted family income" means, except as provided in paragraphs (c), (d), (e), (f), and (g) of this section, and § 690.39, the sum received in 1981 by the student's parents from—

(1) Adjusted gross income, as defined in section 62 of the Internal Revenue Code;

(2) Investment income upon which no Federal income tax need be paid. An example of such income is the interest on municipal bonds; and

(3) With the exception of Social Security benefits received by a student's parents on account of the student, other income upon which no Federal income tax is paid. Examples of income to be reported include child support payments and income from income maintenance programs such as welfare benefits.

(c) For a Native American student, the annual adjusted family income does not include the income received by the student's parents under the Distribution of Judgment Funds Act (25 U.S.C. 1401, et seq.), the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), or the Maine Indians Claims Settlement Act (25 U.S.C. 1721, et seq.)

(d) For a student whose parents are divorced or separated, the following procedures apply for reporting a parent's income to determine the annual adjusted family income—

(1) Report only the income, as described in paragraph (b) of this section, of the parent with whom the student resided for the greater portion of the 12 month period preceding the date of the application.

(2) If the preceding criterion does not apply, report only the income of the parent who provided the greater portion of the student's support for the 12 month period preceding the date of application.

(3) If neither of the preceding criteria apply, report only the income of the parent who provided the greater support for the period commencing January 1, 1981 and ending 12 months prior to the date of application.

(e) If either of the parents have died, the student shall report only the income of the surviving parent. If both parents have died, the student shall not report any parental income.

(f) The following rule applies if either a parent whose income is taken into account under paragraph (d) of this section, or a parent who is a widow or widower and whose income is taken into account under paragraph (d)(3) of this section, has remarried. The income of that parent's spouse shall be included in determining the student's annual adjusted family income if, in either 1981 or 1982, the student—

(1) Has received or will receive financial assistance of more than $750 in either of those years from that spouse, or

(2) Has lived or will live for more than six weeks in either of those years

in the home of the parent and that spouse.

(g) The annual adjusted family income does not include any student financial assistance benefits including Veterans benefits received under Chapters 34 and 35 of Title 38, United States Code.

(Section 124 of Pub. L. 97-92)

§ 690.33a Effective student income.

(a) Effective student income is the annual adjusted income of the student (and spouse for a married student) minus the Federal, State, and local income taxes paid or payable for the year that adjusted gross income is used in the calculation of the student's Pell Grant. However, if estimated income is used, as provided by subparagraph (f) of this section, estimated income taxes will not be subtracted in determining the effective student income.

(b) "Annual adjusted income of the student and spouse" means, except as provided in paragraphs (c), (d), (e) and (f) of this section, and § 690.39:

(1) The sum received in 1981 by the student and spouse from—

(i) Adjusted gross income, as defined in section 62 of the Internal Revenue Code;

(ii) Investment income upon which no income tax need be paid. An example of such income is the interest on municipal bonds; and

(iii) With the exception of Social Security benefits paid to the student (or spouse), other income upon which no Federal income tax is paid. Examples of such income include child support payments, and income from income maintenance programs such as welfare benefits.

(c) For a Native American student, the annual adjusted income of the student and spouse does not include the income received by the student or spouse under the Distribution of Judgment Funds Act (25 U.S.C. 1401, et seq.), the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.), or the Maine Indians Claims Settlement Act (25 U.S.C. 1721, et seq.).

(d) If a student is divorced or separated, or if his or her spouse has died, the spouse's income shall not be considered in determining the "annual adjusted gross income of the student and spouse".

(e) The annual adjusted income of the student and spouse does not include any student financial assistance.

(f) If a student estimates that his or her income plus the income of his or her spouse, in the period of June 1, 1982 through May 31, 1983 will not exceed 60 percent of effective student income for 1981, effective student income will be the income estimated for that period. Estimated income includes only the income categories listed in paragraph (b).

(Section 124 of Pub. L. 97-92)

§ 690.34 Computation of the expected family contribution for a dependent student from the effective family income.

The expected family contribution for a dependent student from effective family income is calculated as follows:

(a) Determine the parent's discretionary income by deducting the following offsets from the effective family income:

(1) A family size offset in the amount specified in the following table:

FAMILY SIZE OFFSETS

Family members	Amount
2	$5,450
3	6,600
4	8,400
5	9,900
6	11,200

Plus $1,250 for each additional family member over 6. In determining the family size, the following rules apply—

(i) If the parents are not divorced or separated, family members include the student's parents, and the dependents of the student's parents.

(ii) If the parents are divorced or separated, family members include the parent whose income is included in computing the effective family income and that parent's dependents.

(iii) If the parents are divorced and the parent whose income is included in computing the effective family income has remarried, or if the parent was a widow or widower who has remarried, family members also include, in addition to those people referenced in paragraph (a)(1)(ii) of this section, the new spouse and any dependents of the new spouse if that spouse's income is included in determining the effective family income.

(2) An unusual expense offset equal to the amount by which the sum of unreimbursed medical and dental expenses exceeds 20 percent of the effective income of the parents. The expenses that may be reported are those expenses paid by the student's parents during 1981, unless the student files an application with the Secretary under the provisions of § 690.39. In that case, the expenses reported will be those paid in 1982. The expenses of both parents are included only if the incomes of both are subject to inclusion in determining the effective family income. Similarly, a stepparent's expenses are included only if his or her income was subject to inclusion.

(3) An employment expense offset in the amount specified as follows—

(i) If both parents were employed in the year for which their income is reported and both have their incomes reported in determining the expected family contribution, use the lesser of $1,500 or 50 percent of the earned income (income earned by work) of the parent with the lesser earned income.

(ii) If a parent qualifies as a head of household as defined in section 2 of the Internal Revenue Code, use the lesser of $1,500 or 50 percent of his or her earned income. The earned income figure to be used in all cases is that figure for 1981 unless the student files an application with the Secretary under the provisions of § 690.39. In that case, the figure to be used is the one for 1982.

(4) An educational expense offset equal to the tuition paid by the student's parents for dependent children, other than the student, enrolled in elementary or secondary school. The tuition which may be reported is the tuition paid in 1981 unless the student files an application with the Secretary under the provisions of §690.39. In that case, the tuition reported will be that paid in 1982.

(b) If the parents' discretionary income is a positive amount, determine the expected contribution from the effective family income according to the following chart. If the parents' discretionary income is negative, there is no expected contribution from income.

Discretionary income	Expected contribution
0 to $5,000	11% of discretionary income.
$5,001 to $10,000	$550+13% of amount over $5,000.
$10,001 to $15,000	$1,200+18% of amount over $10,000.
$15,001 and above	$2,100+25% of amount over $15,000.

(Section 124 of Pub. L. 97-92 and Senate Resolution 256, 97th Congress, First Session)

§ 690.34a Computation of the expected family contribution for a dependent student from the effective student income.

The expected family contribution for a dependent student from effective student income is calculated as follows:

(a) Determine the student's discretionary income by deducting from the effective student income the relevant dependent student offset.

(1) If the parental discretionary income is positive, the offset is as follows:

DEPENDENT STUDENT OFFSET

Single student	$2,850
Married student	$4,200

(2) If the parental discretionary income is negative, the relevant offset in paragraph (a)(1) of this section is increased by the amount of negative parental discretionary income that remains after subtracting the amount of the negative parental discretionary income that will be used as an offset against the contribution from parental assets in § 690.35(d).

(b) If the student's discretionary income is a positive amount, multiply it by one of the following figures to determine the expected contribution from effective student income:

(1) 75 percent for the single dependent student, or

(2) 25 percent for the married dependent student.

(c) If the student's discretionary income is negative, there is no expected contribution from the effective student income.

(Section 124 of Pub. L. 97-92)

§ 690.35 Computation of the expected contribution from parental assets.

The expected contribution from parental asset is determined in the following manner:

(a) If the parental assets include a principal place of residence, deduct $25,000 from the net value of the principal place of residence. If this subtraction produces a negative number, it shall be changed to zero.

(b) If the parental assets include assets other than a principal place of residence and other than farm and business assets, deduct $25,000 from the net value of those other assets. If this subtraction produces a negative number, it shall be changed to zero.

(c)(1) If the parental assets include farm and/or business assets, deduct $80,000 from the net value of the farm and/or business assets. If this subtraction produces a negative number, it shall be changed to zero.

(2) If the sum of the farm and business deduction and the deductions in paragraphs (a) and (b) of this section exceeds $100,000, the farm and business deduction shall be reduced by the amount that that sum exceeds $100,000.

(d)(1) Normally, the expected contribution from parental assets equals five percent of the total of the results obtained in paragraphs (a), (b), and (c) of this section.

(2) However, if the calculation of discretionary income required by § 690.34(a) produces a negative number, the expected contribution from parental assets, calculated under paragraph (d)(1) of this section, shall be reduced by the amount of that negative discretionary income. If this subtraction produces a negative number, it shall be changed to zero.

(e)(1) If the student's parents are separated, or divorced and not remarried, only the assets of the parent whose income is included in computing annual adjusted family income shall be considered.

(2) However, if that parent has remarried, or if the parent was a widow or widower who has remarried, and the parent's spouse's income is also included under § 690.33, the assets of that parent's spouse shall also be included.

(Section 124 of Pub. L. 97-92 and Senate Resolution 256, 97th Congress, First Session)

§ 690.36 Computation of the expected contribution from effective family income and parental assets, adjusted for the number of family members enrolled in programs of postsecondary education.

(a) For each grant, the amount expected from effective family income as determined in § 690.34(b) is added to the amount expected from parental assets as determined in § 690.35.

(b)(1) For each grant, the combined expectation determined in paragraph (a) of this section is adjusted in the following manner for the number of family members who will be attending, on at least a half-time basis, a program of postsecondary education during the award period for which Pell Grant assistance is requested:

Number of family members enrolled in programs of postsecondary education	Expected contribution per student from combined contributions
1	100 percent of the contribution determined in paragraph (a).
2	70 percent of the contribution determined in paragraph (a).
3	50 percent of the contribution determined in paragraph (a).
4 or more	40 percent of the contribution determined in paragraph (a).

(2) Family members are those persons referenced in § 690.34(a)(1).

(Section 124 of Pub. L. 97-92)

§ 690.37 Computation of the expected contribution from the assets of the dependent student (and spouse).

(a) The expected contribution from the net assets of a single dependent student equals 33 percent of the amount of those assets.

(b) The expected contribution from the net assets of the married dependent student and spouse is determined in the following manner:

(1) Deduct an asset reserve of $25,000 from the net assets. If this subtraction produces a negative number, it shall be changed to zero.

(2) The expected contribution from the net assets of the dependent student and spouse equals five percent of the remainder obtained in paragraph (b)(1) of this section.

(c) If the married dependent student is separated, only his or her assets shall be considered.

(Section 124 of Pub. L. 97-92)

§ 690.38 Computation of the total expected family contribution.

For each grant the total expected family contribution is the sum of—

(a) The expected contribution from the effective family income and parental assets as determined in § 690.36,

(b) The expected contribution from effective student income as determined in § 690.34a, and

(c) The expected contribution from the student's (and spouse's) assets as determined in § 690.37.

(Section 124 of Pub. L. 97-92)

§ 690.39 Extraordinary circumstances affecting the expected family contribution determination for a dependent student.

(a) A student may submit an application to the Secretary for determination of his or her expected family contribution using income data from 1982 for effective family income, if—

(1) A parent or stepparent whose 1981 income from work must be reported under § 690.33 has lost his or her job for at least 10 weeks during 1982,

(2) A parent or stepparent whose 1981 income from work must be reported under § 690.33 has been unable to pursue normal income-producing acitvities for at least 10 weeks during 1982 because of the occurrence--in 1981 or 1982—of (i) a disability, or (ii) a natural disaster,

(3) A parent or stepparent whose income must be reported under § 690.33 received unemployment compensation or nontaxable income in 1981 (that would be used in the calculation of the student's expected family contribution) and had a complete loss for at least 10 weeks in 1982 of one of those benefits. A nontaxable benefit, for purposes of this paragraph, must be paid by a public or private agency, a company, or a person because of a court order. Types of nontaxable benefits would include Social Security benefits, welfare, court ordered child support, etc.

(4) The parent(s) of the student have become separated or divorced after the student submitted his or her application. If such a separation or divorce is between a parent and a stepparent, the stepparent's income must have been reportable on the previous application under § 690.33 for this condition to apply, or

(5) A parent of stepparent whose 1981 income must be reported under § 690.33 has died after the submission of an earlier application for 1982-83. However, if the parent referred to in this paragraph is the last surviving parent with whom the student has or will have a dependency relationship according to § 690.42, the student must file an application under § 690.48(a)(7) if he or she wishes to use income data from 1982.

(b) For an application submitted under paragraph (a) of this section, the student (and parent) shall include the income already received for 1982 and an estimate of the income to be received for the remainder of that year.

(c) A student may submit a revised application to reflect changes in asset amounts reported on the previously submitted application if the student or his or her family has suffered a loss of or damage to assets resulting from a natural disaster in an area that has been declared a national disaster area by the President of the United States.

(Section 124 of Pub. L. 97-92)

Subpart D—Expected Family Contribution for an Independent Student

SOURCE: 47 FR 741, Jan. 6, 1982, unless otherwise noted.

§ 690.41 Indicators of financial strength.

"Expected family contribution" for an independent student means the amount that the student and his or her spouse may reasonably be expected to contribute toward the cost of his or her education for an award period. Each of the following elements of financial strength will be considered in determining the family contribution for an independent student;

(a) The effective family income of the independent student and spouse.

(b) The number of family members in the household of the student and spouse.

(c) The number of family members in the household of the student and spouse who are enrolled in, on at least a half-time basis, a program of postsecondary education.

(d) The assets of the student and spouse.

(e) The unusual medical expenses of the student and spouse.

(f) The additional expenses incurred when both the student and spouse are employed or when the employed student qualifies as a surviving spouse or as head of a household under section 2 of the Internal Revenue Code.

(g) The tuition paid by the student or spouse for dependent children who are enrolled in an elementary or secondary school.

(Section 124 of Pub. L. 97-92)

§ 690.42 Special definitions.

The definitions of "assets", "business assets", "farm assets", "family size offset", "Federal income tax", "legal guardian", "local income tax", "medical expense", "net assets", "parent", and "State income tax" are set forth in § 690.32.

"Dependent" means (a) the student's spouse (unless separated or divorced from the student), (b) any of the student's or spouse's children who qualify as dependent students (with respect to the student or spouse) and are attending an institution of higher education on at least a half-time basis, (c) other dependent children of the student or spouse, and (d) other persons who live with and receive more than one-half of their support from the student or spouse and will continue to receive more than one-half of their support from the student or spouse during the 1982-83 award period.

"Effective family income" is described in § 690.43.

"Employment expense offset" means an allowance to meet expenses relating to employment when both the independent student and his or her spouse are employed or when the independent student qualifies as a surviving spouse or as head of a household under section 2 of the Internal Revenue Code.

"Independent student" means:

(a) A single student who for 1981 and 1982—

(1) Has not lived and will not live for more than six weeks in either year in the home of the parent(s) for whom income must be reported according to § 690.33;

(2) Has not been claimed and will not be claimed as a dependent for Federal income tax purposes by the parent(s) for whom income must be reported according to § 690.33; and

(3) Has not received and will not receive financial assistance of more than $750 in either year from the parent(s) for whom income must be reported according to § 690.33; or

(b) A married student who for 1982—

(1) Will not live for more than six weeks in the home of the parent(s) for whom income must be reported according to § 690.33;

(2) Will not be claimed as a dependent for Federal income tax purposes by the parent(s) for whom income must be reported according to § 690.33; and

(3) Will not receive financial assistance of more than $750 from the parent(s) for whom income must be reported according to § 690.33.

(Section 124 of Pub. L. 97-92)

§ 690.43 Effective family income.

(a) Effective family income is the annual adjusted family income minus the Federal income tax paid or payable for the year that adjusted gross income is used in the calculation of the student's Pell Grant.

(b) "Annual adjusted family income" means, except as provided in paragraphs (c), (d), and (e) of this section and § 690.48, the sum received in 1981 by the student and spouse from—

(1) Adjusted gross income, as defined in section 62 of the Internal Revenue Code;

(2) Investment income upon which no Federal income tax is paid. An example of such income is the interest on municipal bonds; and

(3) Other than Social Security benefits, other income upon which no Federal income tax need be paid. Examples of such income include child support payments, and income from income maintenance programs such as welfare benefits.

(c) For a Native American student, the annual adjusted family income does not include the income received by the student or spouse under the Distribution of Judgment Funds Act (25 U.S.C. 1401, et seq.), the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.), or the Maine Indian Claims Settlement Act (25 U.S.C. 1721, et seq.),

(d) In the case of a student who is divorced or separated, or whose spouse has died, the spouse's income shall not be considered in determining the annual adjusted family income.

(e) The annual adjusted family income does not include any student financial assistance including Veterans benefits received under Chapters 34 and 35 of Title 38, United States Code.

(Section 124 of Pub. L. 97-92)

§ 690.44 Computation of the expected family contribution for an independent student from the effective family income.

The expected family contribution for the independent student from effective family income is calculated as follows:

(a) Determine discretionary income by deducting the following offsets from the effective family income.

(1) A family size offset in the amount specified in the following table.

FAMILY SIZE OFFSETS

Family members	Amount
1	$4,200
2	5,450
3	6,600
4	8,400
5	9,900
6	11,200

Plus $1,250 for each additional family member over 6. In determining the family size, the following rules apply—

(i) Family members normally include the student and spouse and their dependents.

(ii) However, if the student is divorced or separated, the spouse (ex-spouse) and his or her dependents are not counted in the family size.

(2) An unusual expense offset equal to the amount by which the sum of unreimbursed medical and dental expenses exceeds 20 percent of effective family income. The expenses that may be reported are those expenses paid by the student and spouse in 1981, unless the student files an application with the Secretary under the provisions of § 690.48. In that case, the expenses reported will be those paid in 1982. The expenses of both the student and spouse are included only if the incomes of both are subject to inclusion in determining the effective family income.

(3) An employment expense offset in the amount specified as follows—

(i) If both the student and spouse were employed in the year for which their income is reported and both have their incomes reported in determining the expected family contribution, use the lesser of $1,500 or 50 percent of the earned income (income earned by work) of the person with the lesser earned income.

(ii) If a student qualifies as a head of household as defined in section 2 of the Internal Revenue Code, use the lesser of $1,500 or 50 percent of his or her earned income.

The earned income figure to be used in all cases is that figure for 1981, unless the student files an application with the Secretary under the provisions of § 690.48. In that case the figure to be used is the one for 1982.

(4) An educational expense offset equal to the tuition paid by the student and spouse for dependent children enrolled in elementary or secondary school. The tuition that may be reported is the tuition paid in 1981, unless the student files an application with the Secretary under the provisions of § 690.48. In that case the tuition reported will be that paid in 1982.

(20 U.S.C. 1070a(a)(3)(B))

(b) If the discretionary income is a positive amount, multiply it by one of the following figures to determine the expected family contribution from the effective family income of the student and spouse;

(1) 75 percent for the single independent student with no dependents; or

(2) 25 percent for the independent student with one or more dependents (including a spouse).

If the discretionary income is negative, there is no expected family contribution from effective family income.

(Section 124 of Pub. L. 97-92 and Senate Resolution 256, 97th Congress, First Session).

§ 690.45 Computation of the expected contribution from the assets of the independent student (and spouse).

(a)(1) Normally, the expected contribution from the net assets of the single independent student with no dependents equals 33 percent of the amount of those assets.

(2) However, if the calculation of discretionary income required by § 690.44(a) produces a negative number, the expected contribution from the student's assets calculated under paragraph (a)(1) of this section shall be reduced by the amount of that negative discretionary income. If this subtraction produces a negative number, it shall be changed to zero.

(b) For an independent student with dependents, the expected contribution from the assets of the student (and spouse) is determined in the following manner:

(1) If the assets include a principal place of residence, deduct $25,000 from the net value of the principal place of residence. If this subtraction produces a negative number, it shall be changed to zero.

(2) If the assets include assets other than a principal place of residence and other than farm and business assets, deduct $25,000 from the net value of those other assets. If this subtraction produces a negative number, it shall be changed to zero.

(3)(i) If the assets include farm and/or business assets, deduct $80,000 from the net value of the farm and/or business assets. If this subtraction produces a negative number, it shall be changed to zero.

(ii) If the sum of the farm and business deduction and the deductions in paragraphs (b)(1) and (b)(2) of this section exceeds $100,000, the farm and business deduction shall be reduced by the amount that that sum exceeds $100,000.

(4)(i) Normally, the expected contribution from the assets of the independent student with dependents equals five percent of the total of the results obtained in paragraphs (b) (1), (2), and (3) of this section.

(ii) However, if the calculation of discretionary income required by § 690.44(a) produces a negative number, the expected contribution from the student's (and spouse's) assets calculated under paragraph (b)(4)(i) of this section shall be reduced by the amount of that negative discretionary income. If this subtraction produces a negative number, it shall be reduced to zero.

(5) If the married independent student with dependents is separated, only his or her assets shall be considered.

(Section 124 of Pub. L. 97-92 and Senate Resolution 256, 97th Congress, First Session)

§ 690.46 Computation of the total expected contribution from the income and assets of the independent student (and spouse), adjusted for the number of family members enrolled in programs of postsecondary education.

(a) For each grant, the amount expected from family income as determined in § 690.44 is added to the amount expected from assets as determined in § 690.45.

(b) For each grant, the combined expectation determined in paragraph (a) of this section is adjusted in the following manner for the number of family members who will be attending, on at least a half-time basis, a program of postsecondary education during the award period for which Pell Grant assistance is requested:

Number of family members enrolled in programs of postsecondary education	Expected contribution per student from combined contributions
1	100 percent of the contribution determined in paragraph (a).
2	70 percent of the contribution determined in paragraph (a).
3	50 percent of the contribution determined in paragraph (a).
4 or more	40 percent of the contribution determined in paragraph (a).

Family members are those persons referenced in § 690.44(a)(1).

(Section 124 of Pub. L. 97-92)

§ 690.47 [Reserved]

§ 690.48 Extraordinary circumstances affecting the expected family contribution determination for an independent student.

(a) A student may submit an application to the Secretary for determination of his or her expected family contribution using income data from 1982 for effective family income if—

(1) The student was employed full-time in 1981 (at least 35 hours per week for a minimum of 30 weeks during 1981) and is no longer employed full-time,

(2) A spouse whose 1981 income from work must be reported under § 690.43 has lost his or her job for at least 10 weeks during 1982,

(3) The student or spouse whose 1981 income from work must be reported under § 690.43 has been unable to pursue normal income-producing activities for at least 10 weeks during 1982 because of the occurrence—in 1981 or 1982—or (i) a disability or (ii) a natural disaster,

(4) The student or spouse whose income must be reported under § 690.43 received unemployment compensation or nontaxable income in 1981 (that would be used in the calculation of the student's expected family contribution) and had a complete loss for at least 10 weeks in 1982 of one of those benefits. A nontaxable benefit, for purposes of this paragraph, must be paid by a public or private agency, a company, or a person because of a court order. Types of nontaxable benefits would include welfare, court ordered child support, etc,

(5) The student has become separated or divorced after he or she submitted his or her application,

(6) A spouse whose 1981 income must be reported under § 690.43 has died after the submission of an earlier application for 1982 or 1983, or

(7) The student's last surviving parent with whom the student has or will have a dependency relationship according to § 690.42 has died.

(b) For an application submitted under paragraph (a) of this section, the student shall include the effective family income to be received for the remainder of that year.

(c) A student may submit a revised application to reflect changes in asset amounts reported on the previously submitted application if the student or his or her spouse has suffered a loss of or damage to assets resulting from a natural disaster in an area that has been declared a national disaster area by the President of the United States.

(Section 124 of Pub. L. 97-92)

Subpart E—Costs of Attendance

SOURCE: 46 FR 37863, July 22, 1981, unless otherwise noted.

§ 690.51 Allowable costs of attendance—general.

(a) Except as provided in §§ 690.54-690.58, a student's cost of attendance means—

(1) The tuition and fees charged to a full-time undergraduate student for an academic year by the institution he or she is attending as determined under § 690.52;

(2) Room and board costs for an academic year as determined under § 690.53; and

(3) An allowance of $400 for books, supplies, and miscellaneous expenses for an academic year.

(b) An institution must be able to justify and document the cost of attendance figures established under this subpart.

(Pub. L. 97-161)

§ 690.52 Tuition and fees.

(a)(1) An institution shall determine the tuition and fees charged a full-time undergraduate student by calculating either—

(i) The actual amount it charges each full-time undergraduate student for tuition and fees for an academic year; or

(ii) The average amount it charges full-time undergraduate students for tuition and fees for an academic year.

(2) However, the institution must use the option it selects under paragraph (a)(1) of this section to determine the tuition and fee charges of all its students under this part.

(b) If an institution establishes its tuition and fee charges on a residency requirement basis (e.g. In-State and Out-of-State) and elects to calculate an average tuition and fee charge, it shall establish a separate average charge for each different residency based classification.

(c) An institution may determine a separate average charge for any other distinct classification upon which it bases tuition and fee charges.

(Pub. L. 97-161)

§ 690.53 Room and board.

The institution shall determine a student's room and board costs for an academic year as follows—

(a) For a student who enters into a contract with the institution for room and/or board, the institution shall choose one of the following cost options but must use the option it selects for all students. The two options are:

(1) The actual amount it charges each student for:

(i) Room and board for an academic year,

(ii) Room, plus an allowance of $625 for board for an academic year, or

(iii) Board, plus an allowance of $475 for room for an academic year, or

(2) The average amount it charges most students for:

(i) Room and board for an academic year,

(ii) Room, plus an allowance of $625 for board for an academic year, or

(iii) Board, plus an allowance of $475 for room for an academic year;

(b) For a student who does not enter into a contract for either room or board, an allowance of $1,100 for an academic year whether or not the student lives with his or her parent(s);

(c) If a student enters into a contract with the institution for board for less than seven (7) days a week, a daily rate will be computed based upon an allowance of $625 for board and used for those days of the academic year not covered by the contract. This amount will be added to the costs established under the applicable subparagraph (1) or (2) of paragraph (a) of this section.

(Pub. L. 97-161)

[46 FR 37863, July 22, 1981, as amended at 47 FR 20737, May 13, 1982]

§ 690.54 Attendance costs for students in correspondence study programs.

The cost of attendance for a student enrolled in a correspondence study program means—

(a) Actual tuition and fees charged to the student for an academic year; and

(b) If incurred in fulfilling a required period of residential training, room and board costs based on—

(1) The actual amount charged to the student by the institution; or

(2) The standard allowance established in § 690.53(b) prorated in the same ratio as the course work completed in residential training bears to the course work for the academic year.

(Pub. L. 97-161)

§ 690.55 Attendance costs for students who are charged for a program whose length exceeds the academic year.

The cost of attendance for a student enrolled in an institution who is charged tuition and fees for a program whose length exceeds the length of the academic year at the institution, is determined by adding—

(a) Tuition and fees ×

$$\frac{\text{clock or credit hours in the academic year}}{\text{clock or credit hours in the program}}$$

and

(b) Room and board costs as determined under § 690.53; and

(c) An allowance of $400 for books, supplies and miscellaneous expenses.

(Pub. L. 97-161)

§ 690.56 Attendance costs for students who are charged for a program whose length is less than the academic year.

The cost of attendance for a student enrolled in an institution who is charged tuition and fees for a program whose length is less than the length of the academic year at the institution is determined by adding—

(a) Tuition and fees ×

$$\frac{\text{clock or credit hours in the academic year}}{\text{clock or credit hours in the program}}$$

and

(b) Room and board costs as determined under § 690.53; and

(c) An allowance of $400 for books, supplies and miscellaneous expenses.

(Pub. L. 97-161)

§ 690.57 Attendance costs for incarcerated students.

(a) The cost of attendance for a student who is incarcerated and for whom at least one-half of his or her room and board expenses is provided includes—

(1) Tuition and fees as determined under § 690.52; and

(2) An allowance of $150 for books and supplies.

(b) The cost of attendance for a student who is incarcerated and for whom less than one-half of his or her room and board expenses is provided is the same as that allowed for a student who is not incarcerated.

(Pub. L. 97-161)

§ 690.58 Attendance costs for students at U.S. Armed Forces Academies.

A student enrolled at the U.S. Military Academy at West Point, the U.S. Naval Academy, the U.S. Air Force Academy or the U.S. Coast Guard Academy is considered to have no cost of attendance.

(Pub. L. 97-161)

Subpart F—Determination of Pell Grant Awards

SOURCE: 45 FR 86399, Dec. 30, 1980, unless otherwise noted.

§ 690.61 Submission process and deadline for Student Eligibility Report (SER).

(a)(1) A student applies for a Pell Grant by submitting a valid "Student Eligibility Report" (SER) to his or her institution or to the Secretary, if that institution is participating in the Pell Grant Program under the Alternate Disbursement System (ADS).

(2) The SER is considered valid only if all information used in the calculation of the eligibility index is complete and accurate when the application was signed. Institutions are entitled to rely on SER information except under conditions set forth in § 690.77.

(b) Except as noted in § 690.77, to receive a Pell Grant, a student who enrolls before May 1 of an award year must submit the SER to his or her institution on or before May 31 of that award year.

A student who enrolls for the first time in the award year on or after May 1 of that award year may submit the SER to the institution on or before June 30 of that award year.

(c) A student attending an institution participating in the Pell Grant Program under the ADS has an additional ten days to submit the SER to the Secretary: June 10 for those who enroll before May 1, and July 10 for those who enroll on or after May 1.

(d) A student who submits an SER to an institution when he or she is no longer enrolled and eligible for payment at that institution may not be paid a Pell Grant.

(20 U.S.C. 1070a)

§ 690.62 Calculation of a Scheduled Pell Grant at full-funding.

(a) When funds are available to satisfy all payments, the Secretary will pay each eligible, full-time student for a complete academic year a Scheduled Pell Grant which is the lowest of:

(1) In award year 1981-82,

(i) The difference between $1,900 and the expected family contribution stated on his or her SER; or

(ii) 50 percent of his or her cost of attendance; or

(iii) The difference between his or her cost of attendance and expected family contribution.

(2) In award year 1982-83,

(i) The difference between $2,100 and the expected family contribution stated on his or her SER; or

(ii) 60 percent of his or her cost of attendance; or

(iii) The difference between his or her cost of attendance and expected family contribution.

(3) In award year 1983-84,

(i) The difference between $2,300 and the expected family contribution stated on his or her SER; or

(ii) 65 percent of his or her cost of attendance; or

(iii) The difference between his or her cost of attendance and expected family contribution.

(4) In award year 1984-85,

(i) The difference between $2,500 and his or her expected family contribution stated on his or her SER; or

(ii) 65 percent of his or her cost of attendance; or

(iii) The difference between his or her cost of attendance and expected family contribution.

(5) In award year 1985-86,

(i) The difference between $2,600 and the expected family contribution stated on his or her SER; or

(ii) 70 percent of his or her cost of attendance; or

(iii) The difference between his or her cost of attendance and expected family contribution.

(b) Notwithstanding paragraph (a) of this section, no payment will be made if the student's Scheduled Pell Grant is less than $200.

(20 U.S.C. 1070a(a)(2))

§ 690.63 Calculation of a Scheduled Pell Grant at less than full funding.

(a) When funds are not available to satisfy all payments, the Secretary calculates a Scheduled Pell Grant at less than full funding by—

(1) Determining the maximum grant award at full funding for that award year. The maximum grant award is the maximum Pell Grant authorized for the award year without regard to an applicant's expected family contribution or cost of attendance;

(2) Subtracting from that amount, the applicant's expected family contribution; and

(3) Reducing the remainder, based on the applicant's expected family contribution, according to the table in paragraph (b) of this section.

(b) If the applicant's expected family contribution is:

(b) If the applicant's expected family contribution is:	The amount calculated in paragraph (a) of this section is reduced by:
$0 to $600	0
$601 to $800	10
$801 to $1,000	20
$1,001 to $1,200	30
$1,201 to $1,600	40
$1,601 or more	50

(c) If the amount appropriated for an award year exceeds the amount needed for making payments under paragraph (a) of this section, the Secretary shall pay the excess to each eligible student in proportion to the degree that the student's award was reduced in accordance with paragraph (b) of this section.

(d) If the amount appropriated for an award year is less than the amount needed for making grants under paragraph (a) of this section, the Secretary shall reduce each amount determined under paragraph (a) of this section according to the following formula:

Scheduled Pell Grant at Pro-Rata Reduction equals amount determined in paragraph (a) of this section times appropriations available for Pell Grants divided by appropriation needed to fund Pell Grants under paragraph (a) of this section.

(e) At less than full funding, the Secretary will pay a Pell Grant to a full time student for a full academic year in an amount which is the lowest of:

(1) The amount calculated in paragraph (a), (c) or (d) of this section, as appropriate;

(2) The appropriate cost of attendance limitation; or

(3) The difference between the student's cost of attendance and expected family contribution.

(f) Notwithstanding paragraph (e) of this section, no payment may be made if

(1) The student's award is less than $50; or

(2) The student's Scheduled Pell Grant at full funding is less than $200.

(20 U.S.C. 1070a)

§ 690.64 Maximum Pell Grant as percentage of cost of attendance.

Notwithstanding § 690.62 and § 690.63, in any award year—

(a) If the maximum grant for that award year is $1,900 or less, no grant may exceed 50 percent of the recipient's cost of attendance;

(b) If the maximum grant for that award year is at least $1,901, but not more than $2,099, no grant may exceed 55 percent of the recipient's cost of attendance;

(c) If the maximum grant for that award year is at least $2,100, but not more than $2,299, no grant may exceed 60 percent of the recipient's cost of attendance; and

(d) If the maximum grant for any award year is at least $2,300, but not more than $2,599, no grant may exceed 65 percent of the recipient's cost of attendance.

(20 U.S.C. 1070a)

§ 690.65 Calculation of a Pell Grant for a payment period.

(a) At those institutions using semesters, trimesters, quarters, or other academic terms and measuring progress by credit hours, a student's Pell Grant for each payment period is calculated as follows:

(1) Determine his or her enrollment status for the term.

(2) Based upon that enrollment status, determine his or her annual award from the Payment Schedule (full-time students), or one of the Disbursement Schedules (part-time students), as appropriate.

(3) Divide the amount determined in subparagraph (2) by the number of terms in an academic year if those terms are of equal length.

(4) If those terms are not of equal length, determine that portion of the award derived in subparagraph (2) which reflects the proportion of the academic year represented by that term. However, a payment for any term may not exceed 50 percent of the award determined in subparagraph (2). To insure this, payments for unequal terms must be adjusted if necessary.

(b) At those institutions which measure progress by clock hours or which measure progress by credit hours or units but do not use semesters, trimesters, quarters or other academic terms, a student's Pell Grant for each payment period is calculated by:

(1) Determining the student's Scheduled Pell Grant; and

(2) Multiplying the Scheduled Pell Grant by:

The number of credit or clock hours the student is expected to take in a payment period divided by the number of credit or clock hours that a full-time student would take in an academic year.

(b) Notwithstanding paragraphs (a) and (b) of this section—

(1) A student may not receive a Pell Grant if the amount which the student would receive, projected on the basis of a full academic year, would be less than either $200 at full funding or $50 at less than full funding; and

(2) The amount of a student's award for an award period may not exceed his or her Scheduled Pell Grant award for that award year.

(20 U.S.C. 1070a)

§ 690.66 Calculation of a Pell Grant for a payment period which occurs in two award periods.

A student who enrolls in a payment period which is scheduled to occur in two award years shall be paid in accordance with the following rules—

(a)(1) The entire payment period will be considered to occur within one award year.

(2) The institution will determine the award year in which the payment period will be placed.

(3) The determination made in paragraph (a)(2) of this section must be

the same for all Pell Grant recipients for all payment periods (in a program) which begin on the same day.

(4) If the institution places the payment period in the first award year, it must pay the student with funds from the first award year.

(5) If the institution places the payment period in the second award year, it must pay the student with funds from the second award year.

(b) The institution may not make a payment which will result in the student receiving more than his or her Scheduled Pell Grant award for that award year.

(c)(1) If a term-based institution offers a series of mini-sessions which occurs in two award years, the combined sessions will be treated as one term. A student may not receive more than one term's award for completing any combination of these sessions.

(2) For such mini-sessions, a term-based institution must determine the student's enrollment status for the entire term. That enrollment status will be based upon—

(i) The total number of credits enrolled for in all sessions if that number is known when the award is calculated, or

(ii) A projected number of credits based upon the credits enrolled for in the first session, if the number of credits to be taken in subsequent sessions is unknown when the award is calculated.

(20 U.S.C. 1070a)

§ 690.67 Transfer student: attendance at more than one institution during an award period.

(a) If a Pell Grant recipient withdraws from one institution and enrolls at a second in the same award year, the student must submit an SER to the second institution or to the Secretary for an institution participating in the program under ADS.

(b) The second institution (or the Secretary for ADS schools) calculates the student's award according to § 690.65.

(c) The second institution (or the Secretary for ADS schools) pays a Pell Grant for only that portion of the award year in which the student is enrolled at that institution. The grant must be adjusted to ensure that the student does not exceed the Scheduled Pell Grant for that award year.

(d) A transfer student must repay any amount received in an award year which exceeds the Scheduled Pell Grant.

(20 U.S.C. 1070a)

§ 690.68 Correspondence study.

A student, enrolled in a program of study by correspondence will be paid according to the following procedures:

(a) The institution prepares a written schedule for submission of lessons. This schedule must reflect a work load of at least 12 hou [illegible] f preparation per week. It is use [illegible] determine the length of the prog [illegible]

(b) The student's [illegible] ell Grant for an award year is calculated by:

(1) Determining the Scheduled Pell Grant according to §§ 690.62 or 690.63, whichever is appropriate, taking into account § 690.64, and

(2) Multiplying the Scheduled Pell Grant by the lesser of the following fractions:

½ or the hours of preparation in the award year divided by the hours of preparation in the academic year.

(This procedure insures that students in a program of study by correspondence are paid as half-time students.)

(d) A student will receive two equal payments for an award year. The first payment will be made after the student has submitted 25 percent of the lessons scheduled for the award year.

(e) The final payment will be made after the student has submitted 75 percent of the lessons scheduled for the award year.

(20 U.S.C. 1070a)

Subpart G—Administration of Grant Payments—Regular Disbursement System

SOURCE: 45 FR 86401, Dec. 30, 1980, unless otherwise noted.

§ 690.71 Scope.

This subpart deals with program administration by an institution of higher education that has entered into an agreement with the Secretary to calculate and pay Pell Grant awards.

(20 U.S.C. 1070a)

§ 690.72 Institutional agreement—Regular Disbursement System (RDS).

(a) The Secretary may enter into an agreement with an institution of higher education under which the institution will calculate and pay Pell Grants to its students. The agreement will be on a standard form provided by the Secretary and will contain the necessary terms to carry out this part.

(b) The Secretary will send a Payment Schedule for each award year to an institution that has entered into an agreement under paragraph (a) of this section.

(20 U.S.C. 1070a)

§ 690.73 Termination of agreement—Regular Disbursement System.

(a) Termination by the Secretary. The Secretary may terminate the agreement with an institution by giving—

(1) 30 days written notice; or

(2) Less than 30 days written notice if it is necessary to prevent the likelihood of a substantial loss of funds to the Federal government or to students.

(b) Information provided. The institution must provide the following information to the Secretary if the Secretary terminates the agreement:

(1) The name and enrollment status of each eligible student who submitted a valid SER to the institution before the termination date;

(2) The amount of funds the institution paid to Pell Grant recipients for the award year in which the agreement is terminated;

(3) The amount due to each student eligible to receive a Pell Grant through the end of the award year; and

(4) An accounting of Pell Grant expenditures to the date of termination.

(c) Termination by the institution. The institution may terminate the agreement by giving the Secretary written notice. The termination becomes effective on June 30 of that award year. The institution must carry out the agreement for the remainder of the award year.

(d) Termination because of a change in ownership which results in a change of control. The agreement automatically terminates when an institution changes ownership which results in a change of control. The Secretary will enter into an agreement with the new owner if the institution complies with requirements set forth in Subpart B of the Student Assistance General Provisions (34 CFR Part 668).

(e) If an agreement is terminated, the institution's eligibility as discussed in § 690.7 is not terminated but the Secretary will pay an institution's students ONLY if the institution enters into an ADS agreement (See § 690.92.).

(20 U.S.C. 1070a)

§ 690.74 Advancement of funds to institutions.

The Secretary will advance funds for each award year, from time to time, to RDS institutions, based on his or her estimate of the institution's need for funds to pay Pell Grants to its students.

(20 U.S.C. 1070a)

§ 690.75 Determination of eligibility for payment.

(a) An institution may pay a Pell Grant to a student only after it determines that the student—

(1) Meets the eligibility requirements set forth in § 690.4;

(2) Is maintaining satisfactory progress in his or her course of study;

(3) Is not in default on any National Defense/Direct Student Loan made by that institution or on any Guaranteed Student Loan or Parent Loan for Undergraduate Students (PLUS) received to meet the cost of attendance at that institution; and

(4) Does not owe a refund on a Pell Grant, a Supplemental Grant or a State Student Incentive Grant received to meet the cost of attending that institution.

(b)(1) Before making any payment to a student, the institution must confirm that he or she continues to meet the criteria set forth in paragraph (a) of this section.

(2) However, if an eligible student submits an SER to the institution and becomes ineligible before receiving a payment, the institution must pay the student only the amount which it determines could have been used for educational purposes before the student became ineligible.

(c) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses itself BEFORE the end of the payment period, the institution may pay a Pell Grant to the student for the entire payment period.

(d) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses itself AFTER the end of the payment period, the institution may neither pay the student a Pell Grant for that payment period nor make adjustments in subsequent Pell Grant payments to compensate for the loss of aid for that period.

(e) Conditions under which students who are overpaid grants may continue to receive Pell Grants are are follows:

(1) Overpayment of a Pell Grant. If an institution makes an overpayment of a Pell Grant to a student, it may continue to make Pell Grant payments to that student if (i) the student is otherwise eligible; and (ii) it can eliminate the overpayment in the award year in which it occurred by adjusting the subsequent Pell Grant payments for that award year.

(2) Overpayment of a Pell Grant due to institutional error. In addition to the exception provided in paragraph (e)(1) of this section, if the institution makes an overpayment of Pell Grant to a student as a result of its own error, it may continue to make payments to that student if;

(i) The student is otherwise eligible, and

(ii) The student acknowledges in writing the amount of overpayment and agrees to repay it in a reasonable period of time.

(3) Overpayment on a Supplemental Grant. An institution may continue to make Pell Grant payments to a student who receives an overpayment on a Supplemental Grant if:

(i) The student is otherwise eligible, and

(ii) It can eliminate the overpayment by adjusting subsequent financial aid payments (other than Pell Grants) in the same award year in which it occurred.

(f) An institution, in determining whether a student is in default on a loan made under the Guaranteed Student Loan Program or the PLUS Program, may rely upon the student's written statement that he or she is not in default unless the institution has information to the contrary.

(g) Conditions under which students who are in default on loans made for attendance at that institution may receive Pell Grants are as follows:

(1) Guaranteed Student Loans and Parent Loans for Undergraduate Student (PLUS). An institution may pay a Pell Grant to a student who is in default on a Guaranteed Student Loan or a PLUS Loan if the Secretary (for federally insured loans) or a guarantee agency (for a loan insured by that guarantee agency) determines that the student has made satisfactory arrangements to repay the defaulted loan.

(2) National Defense/Direct Student Loan. An institution may pay a Pell Grant to a student who is in default on a National Defense/Direct Student Loan made at that institution, if the student has made arrangements, satisfactory to the institution, to repay the loan.

(3) The Secretary does not consider a loan made under the National Defense Student Loan, National Direct Student Loan, Guaranteed Student Loan, or Parent Loans for Undergraduate Students Program which is discharged in bankruptcy to be in default for purposes of this section.

(h) For purposes of this section, an overpayment of a grant means that a student received payment of a grant greater than the amount he or she was entitled to receive.

(20 U.S.C. 1070a)

[45 FR 86401, Dec. 30, 1980, as amended at 46 FR 6331, Jan. 21, 1981]

§ 690.76 Frequency of payment.

(a) In each payment period, an institution may pay a student at such times and in such installments as it determines will best meet the student's needs.

(b) Only one payment is required if a portion of an academic year occurring within one award year is less than three months.

(c) The institution may pay funds due a student for any completed period in one lump sum. The student's enrollment status will be determined according to work already completed.

(20 U.S.C. 1070a)

§ 690.77 Verification of information on the SER—withholding of payments.

(a)(1) The Secretary may require that a student verify the information submitted on the application and included on the SER, by submitting appropriate documentation to the institution or to the Secretary.

(2) The Secretary may also require that the institution withhold payment of a student's grant until the institution or the Secretary determines that the student has supplied the correct information.

(b) If an institution believes that any information on the SER used in calculating the student's expected family contribution is inaccurate, or if the application is chosen by the Secretary for verification, the institution must request that the student verify the information on the SER.

(c) The Secretary will establish and publish—

(1) Procedures to be used in verifying information for selected students ("Validation Procedures"), and

(2) The conditions under which payments will be made for these students.

(d)(1) If a student makes a correction which results in a change in his or her expected family contribution, the student must submit the SER to the institution, and the institution must recalculate the student's award based on the verified SER. Any overpayment must be repaid by the student.

(2) If the documentation requested by the institution under this section does not verify the information on the SER, or if the student does not correct the SER, the institution must forward the student's name, social security number and other relevant information to the Secretary in accordance with the procedures referenced in paragraph (c) of this section.

(e) A student corrects an SER by—

(1) Providing accurate information on the SER;

(2) Getting the appropriate signatures on the SER; and

(3) Re-submitting the SER to the Secretary.

(f) If an institution has documentation which indicates that the information used to calculate the student's expected family contribution on the SER is inaccurate, it may not pay a Pell Grant for any award year until the student corrects the error or verifies the data.

(g) If an institution believes, but cannot document, that inaccuracies exist on the SER, it may not withhold payments unless authorized by the Secretary. These cases must be forwarded to the Secretary.

(h)(1) If the Secretary requests documentation, the student must comply within a time period set by the Secretary.

(2)(i) If the student provides the requested documentation on time, he or she will be eligible for Pell Grant payments based upon the verified SER.

(ii) If the verified SER is submitted to the institution after the appropriate deadline as specified in § 690.61, but within an established time period to be determined by the Secretary, the student may be paid only up to the amount withheld because of the verification process.

(3) If the student does not provide the requested documentation within the established time period—

(i) The student will forfeit the Pell Grant for the award year,

(ii) Any grant payments received must be returned to the Secretary, and

(iii) No further Pell Grant applications will be processed for that student until documentation has been provided or the Secretary decides there is no longer need for documentation.

(20 U.S.C. 1070a)

§ 690.78 Method of disbursement—by check or credit to student's account.

(a) The institution may pay a student either directly by check or by crediting his or her account with the institution. The institution must notify the student of the amount of money he or she can expect to receive, and how he or she will be paid.

(b)(1) The institution may not make a payment to a student for a payment period until the student is registered for that period.

(2) The earliest an institution can directly pay a registered student is 10 days before the first day of classes of a payment period.

(3) The earliest an institution can credit a registered student's account is 3 weeks before the first day of classes of a payment period.

(c) The institution must return to the Pell Grant account any funds paid to a student who, before the first day of classes—

(1) Officially or unofficially withdraws, or

(2) Is expelled.

(d)(1) If an institution pays a student directly, it must notify him or her when it will pay the Pell Grant award.

(2) If a student does not pick up the check on time, the institution must keep that check for 15 days after the date the student's enrollment for that award year ends.

(3) If the student has not picked up the check at the end of the 15 day period, the institution may credit the student's account for any amount owed to it for the award year.

(4) A student forfeits the right to receive the proceeds of the check if he or she does not pick up the check by the end of the 15 day period.

(5) Notwithstanding paragraph (d)(4) of this section, the institution may, if it chooses, pay a student who did not pick up the check, through the next payment period.

(20 U.S.C. 1070a)

§ 690.79 Educational purpose statement.

(a) An institution may not pay a Pell Grant unless the student files a statement of educational purpose with the institution in which the student declares that he or she will use Pell Grant funds solely for educational expenses connected with attendance at the institution.

(b) The Secretary considers the following statement as satisfying this requirement.

Statement of Educational Purpose

I declare that I will use any funds I receive under the Pell Grant program solely for expenses connected with attendance at

____

(Name of Institution)
(Date) ________________________
(Signature) ____________________

(20 U.S.C. 1090)

§ 690.80 Recovery of overpayments.

(a)(1) The student is liable for any overpayment made to him or her.

(2) Also, the institution is liable for an overpayment it makes to a student if the regulations indicate that the payment should not have been made. The institution must restore those funds to the Pell Grant account even if it cannot collect the overpayment from the student.

(b) If an institution makes an overpayment for which it is not liable, it must help the Secretary recover the overpayment by—

(1) Making a reasonable effort to contact the student and recover the overpayment; and, unsuccessful,

(2) Providing the Secretary with the student's name, social security number, amount of overpayment, and other relevant information.

(20 U.S.C. 1070a.)

§ 690.81 Recalculation of a Pell Grant award.

(a) *Change in expected family contribution.* (1) If the student's expected family contribution changes the institution must recalculate the Pell Grant Award.

(2) Except as provided in § 690.77(h)(ii), the institution must adjust the award and pay the student the amount he or she is entitled to for the award year if the expected family contribution is recalculated because of—

(i) A clerical or arithemetic error under § 690.15, or

(ii) Extraordinary circumstances which affect the expected family contribution under § 690.39 and § 690.48.

(3) If a student's expected family contribution is recalculated because of a correction of the information requested under § 690.12 or § 690.77, the student's Pell Grant for the award year must be adjusted. Where possible, the adjustment must be made within the same award year.

(4) If the recalculation takes place in a subsequent award year, the student will be

(i) Eligible to receive payment unless prohibited under the provisions of § 690.77(h) and

(ii) Required to return any overpayment at the time of recalculation.

(b) Change in enrollment status.

(1) If an institution decides that a student's enrollment status has changed during a payment period, it may (but is not required to) establish a policy under which the student's award may be recalculated.

(2) If such a policy is established, it must apply to all students.

(3) If a student's award is recalculated, the institution determines the total amount the student is entitled to for the entire payment period by taking into account—

(i) The portion of the payment period at the original enrollment status;

(ii) The portion of the payment period at the new enrollment status; and

(iii) Any change in the student's cost of attendance.

(20 U.S.C. 1070a)

§ 690.82 Fiscal control and fund accounting procedures.

(a)(1)(i) An institution must receive and process all Pell Grant funds through one identifiable bank account.

(ii) This account may be an existing one (preferably one maintained for Federal funds) if the institution maintains adequate accounting records to account for the Pell Grants funds separately from the other funds in that account.

(iii) At no time may the Pell Grant funds in this bank account be less than the balance indicated in the institution's accounting records for these funds.

(2) The institution must account for the receipt and expenditure of Pell Grant funds in accordance with generally accepted accounting principles.

(b) A separate bank account for Pell Grant funds is not required. However, the institution must notify any bank in which it deposits Pell Grant funds of all accounts in that bank in which it deposits Federal funds. This notice can be given by either:

(i) Including in the name of the account the fact that Federal funds are deposited therein; or

(ii) Sending a letter to the bank listing the accounts in which Federal funds will be deposited. A copy of this letter must be retained in the institution's files.

(c) Except for funds received under § 690.10, funds received by an institution under this part are held in trust for the intended student beneficiaries and may not be used or hypothecated for any other purpose.

(20 U.S.C. 1070a)

§ 690.83 Maintenance and retention of records.

(a) Each institution must maintain adequate records which include the fiscal and accounting records that are required under § 690.82 and records indicating—

(1) The eligibility of all enrolled students who have submitted a valid SER to the institution;

(2) The name, social security number, and amount paid to each recipient;

(3) The amount and date of each payment;

(4) The amount and date of any overpayment that has been restored to the program account;

(5) The "Student Eligibility Report" for each student;

(6) The student's cost of attendance;

(7) How the student's full or part-time enrollment status was determined; and

(8) The student's enrollment period.

(b)(1) The institution must make the records listed in paragraph (a) available for inspection by the Secretary's authorized representative at any reasonable time in the institution's offices. It must keep these records for five years after it submits an accounting of each award year's funds to the Secretary.

(2) An accounting of each award year's funds occurs when the institution submits to the Secretary the June 30 Progress Report for that award year. The June 30 Progress Report (ED Form 255-3) is the report on which an institution reports to the Secretary the total amount of money it has expended in the Pell Grant Program during an award year and the total number of Pell Grant recipients at that institution during that award year.

(c) The institution must keep records involved in any claim or expenditure questioned by Federal audit until resolution of any audit questions.

(d) An institution may substitute microfilm copies in lieu of original records in meeting the requirements of this section.

(20 U.S.C. 1070a)

§ 690.84 Submission of reports.

The institution must submit the reports and information the Secretary requires in connection with the funds advanced to it and must comply with the procedures the Secretary finds necessary to ensure that the reports are correct.

(20 U.S.C. 1070a)

§ 690.85 Audit and examination.

(a) Federal audits. The institution must give the Secretary, the Comptroller General of the United States, or their duly authorized representatives, access to the records specified in § 690.82 and § 690.83 and to any other pertinent books, documents, papers, and records.

(b) Non-Federal audits. The institution must audit or have audited under its direction all Pell Grant Program transactions to determine at a minimum—

(1) The fiscal integrity of financial transactions and reports; and

(2) If such transactions are in compliance with the applicable laws and regulations. Such audits will be performed in accordance with the Department of Education's "Audit Guide" for the Pell Grant Program.

(3) The institution must have an audit performed at least once every two years.

(c) The institution must submit audit reports to the institution's local regional office of the Department of Education's Audit Agency. It must give the Audit Agency and the Secretary access to records or other documents necessary to the audit's review.

(20 U.S.C. 1070a)

Subpart H—Administration of Grant Payments—Alternate Disbursement System

SOURCE: 45 FR 86404, Dec. 30, 1980, unless otherwise noted.

§ 690.91 Scope.

This subpart deals with program administration by an institution of higher education under the Alternate Disbursement System (ADS). Under the ADS, the Secretary calculates and pays the Pell Grant awards.

(20 U.S.C. 1070a)

§ 690.92 Institutional agreement—Alternate Disbursement System (ADS).

(a) Under ADS, the Secretary will calculate and pay Pell Grant awards to students enrolled in an institution which has entered into an agreement to carry out this subpart.

(b) Under this agreement, the institution agrees to:

(1) Complete ED Form 304 for each eligible student as specified in § 690.94; and

(2) Maintain and keep records as specified in § 690.96.

(20 U.S.C. 1070a)

§ 690.93 Change in ownership and change to the Regular Disbursement System (RDS).

(a) Change to RDS. The Secretary may enter into an agreement with an ADS institution which wishes to participate in the program under the Regular Disbursement System. However, the agreement will go into effect July 1 of the succeeding award year.

(b) Termination because of a change in ownership that results in a change in control.

(1) An ADS agreement terminates when an institution changes ownership that results in a change in control.

(2) The Secretary may enter into an agreement with the new owner if the institution complies with the requirements set forth in Subpart B of the Student Assistance General Provisions (34 CFR Part 668).

(20 U.S.C. 1070a)

§ 690.94 Calculation and disbursement of awards by the Secretary of Education.

(a) An eligible student enrolled in an institution participating in the Pell Grant Program under the ADS applies to the Secretary for a Pell Grant according to the following procedures:

(1) The student submits an SER to his or her institution and obtains an ED Form 304 from the institution;

(2) The student completes the ED Form 304, including the statement of educational purpose described in § 690.79, and submits it to the institution;

(3) On the ED Form 304 the institution certifies that the student—

(i) Meets eligibility requirements of § 690.4,

(ii) Is maintaining satisfactory progress in his or her course of study,

(iii) Does not owe a refund on grants received for attendance at that institution under the Pell Grant, the Supplemental Grant, or the State Student Incentive Grant Programs, and

(iv) Is not in default on any National Defense/Direct Student Loan made by the institution or on any Guaranteed Student Loan received for attendance at that institution. (In determining whether a student is in default on a GSL, the institution may rely on a written statement provided by the student unless the institution has information to the contrary); and

(4) The institution returns the SER and ED Form 304 to the student, who then submits these documents to the Secretary. Both documents must be received by the Secretary on or before the deadline dates described in § 690.61.

(b) If an institution believes that the information on an SER may be in error, the institution must notify the student and request documentation or correction. Any case not resolved by the institution should be reported to the Secretary.

(c) The Secretary will calculate a student's award in accordance with Subpart F of this part and will pay the student once every payment period.

(20 U.S.C. 1070a)

§ 690.95 Termination of enrollment and refund.

(a) The institution must inform the Secretary of the date when a student officially or unofficially withdraws or is expelled during a payment period for which that student was paid.

(b) A student who officially or unofficially withdraws or is expelled from an institution before completion of 50 percent of a payment period for which he or she has been paid, will refund a prorated portion of the payment as determined by the Secretary.

(20 U.S.C. 1070a)

§ 690.96 Maintenance and retention of records.

(a) An institution under the ADS must establish and maintain for each award year—

(1) Records relating to each Pell Grant recipient's enrollment status, and attendance costs at the institution; and

(2) Records showing when each recipient was enrolled.

(b) The institution must make these records available at the geographic location where the student will receive his or her degree or certificate of course completion, and must keep them for five years from the end of the award year.

(c) The institution will make available to the Secretary, the Comptroller General of the United States, and their authorized representatives, pertinent books, documents, papers, and records for audit and examination during the five year retention period.

(d) An institution may substitute microfilm copies in lieu of original records in meeting the requirements of this section.

(20 U.S.C. 1070)

PART 692—STATE STUDENT INCENTIVE GRANT PROGRAM

Subpart A—General

Sec.
692.1 What is the State Student Incentive Grant Program?
692.2 Who is eligible to participate in the State Student Incentive Grant Program?
692.3 What regulations apply to the State Student Incentive Grant Program?
692.4 What definitions apply to the State Student Incentive Grant Program?

Subpart B—What Does the Department Assist Under This Program?

692.10 For what purposes may a State use its payments under this program?

Subpart C—How Does a State Apply To Participate in This Program?

692.20 What agreement must a State have with the Secretary?
692.21 What requirements must be met by a State program?

Subpart D—[Reserved]

Subpart E—How Does a State Select Students for Grants?

692.40 What are the requirements for student eligibility?
692.41 What standards may a State use to determine substantial financial need?

AUTHORITY: Secs. 415A-415D of Title IV of the Higher Education Act of 1965, as amended, 86 Stat. 255, 90 Stat. 2094, 91 Stat. 218, 94 Stat. 1406-1407 (20 U.S.C. 1070c-1070c-3), unless otherwise noted.

SOURCE: 46 FR 36342, July 14, 1981, unless otherwise noted.

Subpart A—General

§ 692.1 What is the State Student Incentive Grant Program?

The State Student Incentive Grant Program assists States that provide grants to eligible students who attend institutions of higher education and have substantial financial need.

(20 U.S.C. 1070c-1070c-3)

§ 692.2 Who is eligible to participate in the State Student Incentive Grant Program?

(a) *State participation.*

A State that meets the requirements in §§ 692.20-692.21 is eligible to receive payments under this program.

(b) *Student participation.*

A student who meets the requirements of §§ 692.40 is eligible to receive a grant from a State under this program.

(20 U.S.C. 1070c-1)

§ 692.3 What regulations apply to the State Student Incentive Grant Program?

The following regulations apply to the State Student Incentive Grant Program:

(a) The regulations in this Part 692;

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-Administered Programs), and in 34 CFR Part 77 (Definitions).

(c) The regulations in 34 CFR Part 604 that implement section 1203 of the Act (Federal-State Relationship Agreements).

(20 U.S.C. 1070c)

§ 692.4 What definitions apply to the State Student Incentive Grant Program?

The following definitions apply to the regulations in this part:

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Nonprofit
Secretary
State

(b) *Definitions in 34 CFR Part 668.* The following definitions in 34 CFR Part 668 apply to the regulations in this part:

Public or private nonprofit institution of higher education (§ 688.2).

Proprietary institution of higher education (§ 668.3).

Postsecondary vocational institution (§ 668.4).

Recognized equivalent of a high school diploma (§ 668.5).

Ability to benefit (§ 668.6).

One year training program (§ 668.7).

Six month training program (§ 668.8).

(c) *Other definitions that apply to this part.* The following additional definitions apply to this part:

"Academic year" means a period of time during which a full-time student is expected to complete the equivalent of one of the following:

(1) Two semesters.

(2) Two trimesters.

(3) Three quarters.

(4) Nine hundred clock hours of instruction.

"Act" means the Higher Education Act of 1965, as amended.

"Clock hour" means a period of time that is equivalent to—

(1) A 50- to 60-minute class, lecture, or recitation; or

(2) A 50- to 60-minute faculty-supervised laboratory, shop training, or internship.

"Full-time student" means a student carrying a full-time academic workload—other than by correspondence—as measured by both of the following:

(1) Coursework or other required activities, as determined by the institution that the student attends or by the State.

(2) The tuition and fees normally charged for full-time study by that institution.

(20 U.S.C. 1070c-1070c-3)

Subpart B—What Does the Department Assist Under This Program?

§ 692.10 For what purposes may a State use its payments under the program?

A State may use its payments under this State Student Incentive Grant Program to—

(a) Make grants to students under new student grant programs; or

(b) Award or expand grants under existing student grant programs by—

(1) Making grants to eligible students;

(2) Increasing the size of grants; or

(3) Awarding grants to additional students.

(20 U.S.C. 1070c)

Subpart C—How Does a State Apply to Participate in This Program?

§ 692.20 What agreement must a State have with the Secretary?

To participate in the State Student Incentive Grant Program, a State must—

(a) Enter into an agreement with the Secretary under section 1203 of the Act (Federal-State Relationship Agreement); and

(b) For each fiscal year that it wishes to participate, submit an application that contains information that shows that the State's student grant program meets the requirements in § 692.21.

(20 U.S.C. 1070c-2(a))

(CROSS-REFERENCE: See 34 CFR Part 604, Federal-State Relationship Agreements)

§ 692.21 What requirements must be met by a State program?

To receive a payment under this program for any fiscal year, a State must have a program that—

(a) Is administered by a single State agency in accordance with the Federal-State Relationship Agreement under section 1203 of the Act;

(b) Awards grants only to students who meet the eligibility requirements in § 602.40;

(c) Provides that a grant to a full-time student will not be more than $2,000 for each academic year;

(d) Provides for the selection of students to receive grants on the basis of substantial financial need determined annually by the State on the basis of standards that the State establishes and the Secretary approves.

(CROSS-REFERENCE: See § 692.41.)

(e) Provides that all nonprofit institutions of higher education in the State are eligible to participate unless that participation is in violation of—

(1) The constitution of the State; or

(2) A State statute that was enacted before October 1, 1978.

(f) Provides that, with the approval of the State agency, an institution of higher education may use any proportion of the payments under this program for grants to students who are less than half-time students.

(g) Provides that—

(1) The State will pay at least 50 percent of each grant; and

(2) The amount that the State expends during a fiscal year for grants under this program represents an additional amount for grants to students attending institutions of higher education over the amount expended by the State for that purpose during the second fiscal year before the fiscal year in which the State first received funds under this program;

(h) Provides for State expenditures under the State program of an amount that is not less than—

(1) The average annual aggregate expenditures for the preceding three fiscal years; or

(2) The average annual expenditure per full-time equivalent student for those years; and

(i) Provides for reports to the Secretary that are necessary to carry out the Secretary's functions under this part.

(20 U.S.C. 1070c-2)

Subpart D—[Reserved]

Subpart E—How Does a State Select Students for Grants?

§ 692.40 What are the requirements for student eligibility?

(a) To be eligible for a grant and to receive payments under the grant, a student must—

(1)(i) Be a United States citizen or National;

(ii) Be a permanent resident of the United States;

(iii) Provide evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a permanent resident of the United States; or

(iv) Be a permanent resident of the Trust Territory of the Pacific Islands or of the Northern Mariana Islands;

(2) Be enrolled or accepted for enrollment at an institution of higher education;

(3) Have substantial financial need as determined annually in accordance with the State's criteria approved by the Secretary;

(4) Maintain satisfactory progress in a course of study in accordance with the standards and practices of the institution at which he or she is enrolled;

(5)(i) Not owe a refund on a grant received for attendance at that institution under the Pell Grant, Supplemental Educational Opportunity Grant, or State Student Incentive Grant programs;

(ii) Not be in default on a loan made by the institution under the National Defense Student Loan or National Direct Student Loan programs unless he or she has made arrangements, satisfactory to the institution, to repay the loan; and

(iii) Not be in default on a loan insured under the Guaranteed Student Loan or the Parent Loans for Undergraduate Students (PLUS) program received to meet the cost of attending that institution unless the Secretary (for a federally insured loan) or a guarantee agency (for a loan insured by that guarantee agency) determines that he or she has made satisfactory arrangements to repay the loan; and

(6) File with the institution (or with the lender, in the case of a loan or a loan guarantee) a statement that the money attributable to the grant, loan, or loan guarantee will be used solely for expenses related to attendance or continued attendance at the institution.

(b) The Secretary does not consider a National Defense Student Loan, a National Direct Student Loan, or a Guaranteed Student Loan that is discharged in bankruptcy to be in default for purposes of this section.

(20 U.S.C. 1070c-2, 1091)

§ 692.41 What standards may a State use to determine substantial financial need?

A State determines whether a student has substantial financial need on the basis of criteria it establishes that are approved by the Secretary. A State may define substantial financial need in terms of family income, expected family contribution, and relative need as measured by the difference between the student's cost of attendance and the resources available to meet that cost. To determine substantial need, the State may use:

(a) The standards for determining need promulgated by the Secretary under section 482 of the Act; or

(b) The needs analysis systems approved for campus-based Federal student assistance programs; or

(c) The State's own needs analysis system if approved by the Secretary; or

(d) A combination of these systems, if approved by the Secretary.

(20 U.S.C. 1070c-2, 1089)

CHAPTER VII—OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT, DEPARTMENT OF EDUCATION

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PART 700—GENERAL

Sec.
700.1 Definitions.
700.2 Regulations that apply to programs of the Department.
700.3 Purpose.

AUTHORITY: Sec. 405 of the General Education Provisions Act, as added by Section 301(a)(2) of Pub. L. 92-318, 86 Stat. 328 (20 U.S.C. 1221e), unless otherwise noted.

§ 700.1 Definitions.

As used in this chapter—"Council" means the National Council on Educational Research;

"Educational research" means research (basic and applied), planning, surveys, evaluations, investigations, experiments, developments, and demonstrations in the field of education (including career education).

[45 FR 22543, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980, and amended at 45 FR 86300, Dec. 30, 1980]

§ 700.2 Regulations that apply to programs of the Department.

(a) *Regulations.* The following regulations apply to programs of the Department:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and Part 77 (Definitions).

(2) The regulations in this Chapter VII.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Department" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Department programs; and

(2) Applying for assistance under a Department program.

(20 U.S.C. 1221e-3(a)(1))

[45 FR 22543, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980, and amended at 45 FR 86300, Dec. 30, 1980]

§ 700.3 Purpose.

(a) Congress has declared it a policy of the United States to provide to every person an equal opportunity to receive an education of high quality regardless of race, color, religion, sex, national origin, or social class. The Federal Government has a clear responsibility to provide leadership in the conduct and support of scientific inquiry into the educational process. Congress has further declared it to be the policy of the United States to:

(1) Help to solve, or to alleviate the problems of, and promote the reform and renewal of, American education;

(2) Advance the practice of education as an art, science, and profession;

(3) Strengthen the scientific and technological foundations of education; and

(4) Build an effective educational research and development system.

[39 FR 38999, Nov. 4, 1974, as amended at 45 FR 22543, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

PART 701—ELIGIBILITY AND APPLICATION FOR RESEARCH GRANT ASSISTANCE

Sec.
701.2 Eligibility for award.
701.6 Unsolicited proposals.
701.10 Evaluation of applications.

AUTHORITY: Sec. 405 of the General Education Provisions Act, as added by section 301(a)(2) of Pub. L. 92-318, 86 Stat. 328 (20 U.S.C. 1221e), unless otherwise noted.

§ 701.2 Eligibility for award.

(a) *Persons eligible.* Except as otherwise prohibited by law, any individual and any public or nonprofit private organization, institution, or agency found by the Secretary to be authorized and qualified by educational, scientific, or other relevant competence to carry out a proposed research project shall be eligible for an award.

(b)(1) *Projects eligible.* Any project found by the Secretary to be an educational research project within the meaning of § 700.1 of this subchapter shall be eligible for an award.

(2) An eligible project may include planning, laboratory, clinical, population, field, statistical, basic, applied or other type of investigation, study, or experiment, dissemination, use, application, implementation, training, development or demonstration, or combinations of those.

(3) An eligible project may either—

(i) Be limited to one—or a particular aspect of a—problem or subject; or

(ii) Consist of two or more related problems or subjects for concurrent or consecutive investigation and involving multiple disciplines, facilities, and resources.

[45 FR 22543, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 701.6 Unsolicited proposals.

(a) It is the policy of the Department to encourage parties eligible under this subchapter to originate valuable ideas for projects relevant to the furtherance of the purposes specified in § 700.3 of this subchapter and to submit such ideas as unsolicited proposals.

(b) The Secretary will make funds available for the support of unsolicited proposals rated highly on the basis of criteria specified under paragraph (c) of this section according to the availability of funds within allocations established by the Council.

(c) Unsolicited proposals which may lead to either grant or contract awards will be evaluated according to (1) the criteria set forth in 41 CFR Subpart 3-4.52 (with respect to procurement contracts) or § 701.10(b) (with respect to grants) and (2) the extent to which they meet one or more of the following conditions:

(i) The proposal represents a unique opportunity for use of resources or conditions to conduct research or development with potential for important advancement in knowledge;

(ii) The proposal addresses an ED priority in a more promising way than already planned work;

(iii) The proposal addresses an ED priority by complementing already planned work with an alternative, perhaps contrary approach to the problem.

[39 FR 39000, Nov. 4, 1974. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 701.10 Evaluation of applications.

(a) [Reserved]

(b) *Criteria for evaluation.* Review of applications under paragraph (a) of this section will take into account the following factors.

(1) Potential of the proposed project for effectuating the purposes specified under § 700.3;

(2) Significance of the proposed research for American education, including:

(i) Importance of the problem area from the standpoint of basic knowledge or problems of American education; and

(ii) Likely magnitude of the addition that will be made to knowledge if the project is successful, including the generalizability of the results;

(3) Quality of the proposed research project, including such considerations as:

(i) Extent to which the application exhibits thorough knowledge of pertinent previous work and relates the proposed research to it:

(ii) Likelihood of the success of the project; and

(iii) Adequacy of design, methodology and instrumentation, where appropriate;

(4) Qualifications of the principal investigator and other professional personnel, as evidenced by:

(i) Experience and previous research productivity; and

(ii) Quality of the discussion and analysis in the application;

(5) Adequacy of the facilities and arrangements available to the investigator to conduct the proposed study;

(6) Reasonableness of the budget for the work to be done and the anticipated results; and

(7) Where the applicant has previously received an award from the Federal Government, the applicant's compliance or noncompliance with requirements applicable to such prior award: *Provided, however,* That in any case where the Secretary proposes to deny assistance based upon the applicant's noncompliance with requirements applicable to a prior award, he shall do so only after affording the applicant reasonable notice and an opportunity to rebut the proposed basis for denial of assistance.

(31 U.S.C. 628)

[39 FR 39000, Nov. 4, 1974, as amended at 45 FR 22543, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

PART 702—MISCELLANEOUS REQUIREMENTS

Subpart A—Data-Collection Instruments and Protection of Human and Animal Subjects—[Reserved]

Subpart B—General Requirements

§ 702.7 Principal investigators.

(a) All grants shall be subject to the condition that the principal investigator(s) designated in the application as responsible for the conduct of the approved project shall continue to be responsible for the duration of the project period.

(b) When an investigator referred to in paragraph (a) of this section is absent for three months or longer or otherwise becomes unavailable to discharge this responsibility, the Secretary may terminate the grant, unless the grantee replaces the investigator with another person found by the Secretary to be qualified to direct and conduct the approved project.

Sec. 405 of the General Education Provisions Act as added by sec. 301(a)(2) of Pub. L. 92-318, 86 Stat. 328 (20 U.S.C. 1221e)

[45 FR 22543, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

PART 703—EXPERIMENTAL PROGRAM FOR OPPORTUNITIES IN ADVANCED STUDY AND RESEARCH IN EDUCATION

Subpart A—General

Sec.
703.1 The Experimental Program for Opportunities in Advanced Study and Research in Education.
703.2 Eligible parties.
703.3 Regulations that apply to this program.
703.4 Definitions that apply to this program.

Subpart B—Types of Projects the Secretary Assists Under This Program

703.10 Types of projects.
703.11 Authorized activities.
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703.14 Project duration.

Subpart C—How One Applies for a Grant

Sec.
703.20 Application procedures.

Subpart D—How the Secretary Makes a Grant

703.30 How the Secretary evaluates an application.
703.31 The selection criteria used by the Secretary.

Subpart E—Conditions that Must Be Met by a Grantee

703.40 Restrictions on the use of grant funds.
703.41 Allowable costs.
703.42 Restrictions on for-profit grantees.

AUTHORITY: Sec. 405 of the General Education Provisions Act, as amended by Sec. 301(a)(2) of the Education Amendments of 1972 (Pub. L. 92-318), 86 Stat. 328, 332 (20 U.S.C. 1221e), unless otherwise noted.

SOURCE: 46 FR 49585, Oct. 7, 1981, unless otherwise noted.

Subpart A—General

§ 703.1 The experimental program for opportunities in advanced study and research in education.

This program supports experimental projects that explore ways of increasing opportunities for members of underrepresented groups to attain and participate in senior positions in the field of educational research. These projects demonstrate effective ways that—

(a) Enhance equality of opportunity within the educational research workforce.

(b) Increase the relevance and credibility of educational research through greater inclusion of contributions and perspectives of members of underrepresented groups.

(c) Improve the overall quality of educational research by drawing upon those talented members of underrepresented groups who currently are engaged in research other than educational research or are nonresearch professionals who are capable of making a significant contribution to educational research.

(20 U.S.C. 1221e(b)(2), (c) and (e)(1))

§ 703.2 Eligible parties.

A college, university, State or local educational agency, other public or private nonprofit or for-profit agency or organization is eligible to receive a grant.

(20 U.S.C. 1221e(e)(1))

§ 703.3 Regulations that apply to this program.

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (Definitions).

(b) The regulations in this Part 703.

(20 U.S.C. 3474)

§ 703.4 Definitions that apply to this program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Award
EDGAR
Local educational agency
Nonprofit
Public
Project
Secretary
State educational agency

(b) *Specific program definitions.* Other definitions used in this part are:

"Educational research" means research (basic and applied), planning, surveys, evaluations, investigations, experiments, developments, or demonstrations in the field of education (including career education).

"Experienced professional" means a person with a year or more of graduate-level training in educational research and at least one additional year of related professional experience in educational research.

"Participant" means an individual enrolled in a project assisted with Federal funds under this part.

"Underrepresented groups" means groups whose members have been traditionally underrepresented in educational research, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly

(20 U.S.C. 1221e(e)(1) and 3474)

Subpart B—Types of Projects the Secretary Assists Under This Program

§ 703.10 Types of projects.

The Secretary awards grants for two types of projects under this program—Institutional Projects and Special Projects. One purpose of both types is to advance the careers of members of underrepresented groups in the field of educational research.

(a) Institutional Projects provide opportunities to engage in advanced study and educational research.

(b) Special Projects provide short term study opportunities. The short courses are expected to—

(1) Stimulate the interests of noneducational researchers; and

(2) Attract to the educational research field those nonresearchers who have appropriate academic backgrounds and experience.

(c) Another purpose of both types of projects is to develop exemplary models illustrating ways of accomplishing the objectives of the program established in § 703.1.

(20 U.S.C. 3474)

§ 703.11 Authorized activities.

The Secretary funds projects that include one or more of the following activities:

(a) Develop and demonstrate effective ways to overcome barriers to the employment and advancement in educational research of members of underrepresented groups.

(b) Provide opportunities to conduct research studies for members of underrepresented groups who are either—

(1) Preparing for employment in educational research; or

(2) Seeking ways to further utilize their noneducational research capabilities; or

(3) Advancing in the field of educational research.

(c) Furnish information to participants about advanced study opportunities provided by others.

(d) Arrange for experts to advise the project and its participants on the application to this project of concepts and methods from relevant fields and disciplines.

(e) Engage persons to serve as mentors. One function of these persons is to advise participants about means for gaining access to communication networks of concern to the educational research and development community.

(20 U.S.C. 3474)

§ 703.12 Required activities.

(a) *General.* The Secretary funds only those projects that ensure that members of underrepresented groups and the organizations that represent them are involved in the planning for and in the conduct of the projects.

(b) *Institutional Projects.* The Secretary funds only Institutional Projects that—

(1)(i) Provide study opportunities at the post-doctoral level, except as provided in (b)(1)(ii) of this section;

(ii) Full-time, doctoral-level graduate work may be supported only if there is a showing that it is necessary to meet the objectives of the program established in § 703.1;

(2) Provide opportunities to post-doctoral students or experienced professionals to conceive and conduct educational research. That research may or may not reflect concerns and perspectives of underrepresented groups; and

(3) Develop and implement policies and procedures to increase the involvement, the professional growth, and the opportunities for advancement, of members of underrepresented groups, within one or more units of the grantee organization.

(c) *Special Projects.* The Secretary funds only Special Projects that—

(1) Provide seminars, workshops, short courses, or brief residential courses; and

(2) Emphasize at least one of the following:

(i) Research approaches and topics associated with the needs of members of underrepresented groups;

(ii) Development of skills needed in educational research, including statistical training and training in the conduct of syntheses and transformation of knowledge;

(iii) Enhancement of the potential of participants to publish and disseminate the results of their significant educational research by providing information and training about research techniques, report writing, and publishing processes; or

(iv) Any other skills directed to expanding and improving the ability of members of underrepresented groups to conduct research concerning equal educational opportunities.

(20 U.S.C. 3474)

§ 703.13 Projects and activities that are ineligible for support.

The Secretary does not fund projects that include—

(a) Pre-college or undergraduate programs of any type.

(b) Course work or other education or training that is not adapted specifically to the requirements of this program.

(20 U.S.C. 3474)

§ 703.14 Project duration.

(a) The initial period of a project is 12 months. If an application is for a multi-year project, continuation awards may be made for one or two additional 12 month periods.

(b) A Special Project may be continued beyond the initial 12 month period only if it provides a sequence of short term activities that are recurring (same activities for different participants) or intermittent (different activities for the same or different participants).

(20 U.S.C. 3474)

Subpart C—How One Applies for a Grant

§ 703.20 Application procedures.

One applies for a grant under the procedures of EDGAR § 75.100 through § 75.129.

(20 U.S.C. 3474)

Subpart D—How the Secretary Makes a Grant

§ 703.30 How the Secretary evaluates an application.

(a) The Secretary evaluates an application on the basis of the selection criteria in § 703.31.

(b) The Secretary awards up to 100 total points depending upon the degree to which each of these criteria is satisfied.

(c) The maximum possible score for each criterion is indicated in parenthesis following the identification of each selection criterion.

(d) The Secretary decides whether or not to fund a meritorious application based on its rank order under the selection criteria of § 703.31, and on whether the funding of the project will contribute to the widest possible distribution of projects throughout the United States.

(20 U.S.C. 3474)

§ 703.31 The selection criteria used by the Secretary.

(a) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each key person will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) In determining the qualifications of key personnel, the Secretary considers evidence of past experience and training in fields related to the objectives of the program as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Cost are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

CROSS REFERENCE: See EDGAR § 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project

and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows that the facilities, equipment, and supplies planned to be used are adequate.

(f) *Significance of the project in meeting the purpose of the program.* (25 points)

(1) The Secretary looks for information that shows the significance of the project in terms of the potential for developing methods for removing barriers to the participation of members of underrepresented groups in educational research and in initiating and advancing their careers in educational research.

(g) *Commitment of the applicant to the purpose of the program.* (20 points)

(1) The Secretary reviews each application for information that shows the extent to which the applicant is committed to meeting the purpose of the program.

(2) The Secretary looks for information that shows the commitment of the applicant to—

(i) The adoption of successful methods which are developed under the project; or

(ii) The continuation after termination of Federal funding of exemplary practices intitiated under the project.

(20 U.S.C. 3474)

Subpart E—Conditions That Must Be Met by a Grantee

§ 703.40 Restrictions on the use of grant funds.

A grantee may not use funds for construction, repair, remodeling, or alternation of facilities or sites.

(20 U.S.C. 3474)

§ 703.41 Allowable costs.

A grantee may provide financial assistance to participants of Special Projects in an amount up to $30 for each full day of participation, but the assistance may not exceed $150 a week.

(20 U.S.C. 3474)

§ 703.42 Restrictions on for-profit grantees.

A for-profit grantee must forego profits and share costs to the same extent that is required of a nonprofit grantee.

(20 U.S.C. 3474)

PART 705—GOVERNMENT IN THE SUNSHINE ACT REGULATIONS

Sec.
705.1 General rule.
705.2 Grounds for closing meetings.
705.3 Materials relating to closed portions of meetings.
705.4 Opening of transcript or recording.
705.5 Public announcement.
705.6 Meeting changes.
705.7 Record vote.
705.8 Application to NCER Committees.

AUTHORITY: Government in the Sunshine Act, sec. 552b of Title 5, United States Code: 90 Stat. 1241.

SOURCE: 42 FR 14721, Mar. 16, 1977, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

§ 705.1 General rule.

Except as otherwise provided in these regulations, every portion of every meeting of the NCER will be open to public observation.

§ 705.2 Grounds for closing meetings.

(a) The NCER may by record vote close any portion of any meeting if it properly determines that an open meeting:

(1) Is likely to disclose matters that (i) are specifically authorized under criteria established by Executive Order to be kept secret in the interests of national defense or foreign policy and (ii) are in fact properly classified pursuant to the Executive Order;

(2) Is likely to relate solely to the internal personnel rules and practices of the Department (ED);

(3) Is likely to disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552): *Provided,* That the statute (i) requires in such a manner as to leave no discre-

tion on the issue that the matters be withheld from the public, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Is likely to involve accusing any person of a crime, or formally censuring any person;

(6) Is likely to disclose personal information where the disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Is likely to disclose investigatory law-enforcement records, or information which, if written, would be contained in such records, but only to the extent provided in 5 U.S.C. 552b(v)(7);

(8) Is likely to disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Is likely to disclose information, the premature disclosure of which would (i) In the case of information received from an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (A) lead to significant financial speculation in currencies, securities, or commodities, or (B) significantly endanger the stability of any financial institution; or (ii) Be likely to significantly frustrate implementation of a proposed ED action, unless the ED has already disclosed to the public the content or nature of its proposed action or is required by law to make such disclosure on its own initiative before taking final action; or

(10) Is likely to specifically concern the ED participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration.

(b) Such a determination must also include the NCER's consideration and determination whether the public interest merits keeping the meeting open, despite the applicability of an exemption permitting a closed meeting or portion thereof.

(c) Anyone who believes his interests may be directly affected by a portion of a meeting may request that the NCER close it to the public for any reason referred to in paragraphs (a) (5), (6), or (7) of this section. This request should be addressed to the Chief, NCER Staff at the headquarters of the ED. It will be circulated to Members of the NCER if received at least three full days before the meeting, and on motion of any Member, the NCER will determine by record vote whether to close the affected portion of the meeting.

§ 705.3 Materials relating to closed portions of meetings.

If a portion or portions of any meeting of the NCER are closed to the public under § 705.2;

(a) The General Counsel of ED shall certify, in writing to the NCER prior to any NCER vote, whether or not in his or her opinion the proposed closing of any portion or portions of a meeting or series of meetings is proper under the provisions of this subpart and of the Government in the Sunshine Act.

(b) The presiding officer of the meeting (usually the Chairman of NCER) shall furnish a statement setting forth the time and place of the meeting and the persons present.

(c) The NCER shall make a complete transcript or electronic recording adequate to record fully the proceedings of each portion of the meeting that is closed to the public.

(d) The NCER office shall maintain the General Counsel's certificate, the presiding officer's statement and the transcript or recording of the meeting for at least two years after the meeting and at least one year after the NCER completes consideration of any proposal, report, resolution, or similar matter discussed in any closed portion of the meeting.

§ 705.4 Opening of transcript or recording.

(a) Except as otherwise provided in this section, the transcript or electronic recording of every portion of every meeting closed to the public will promptly be made available on request to any member of the public in an easily accessible place. The NCER office will furnish to any member of the public on request copies of the transcript or of a transcription of the recording disclosing the identity of each speaker, and will charge for the copies or transcriptions no more than the actual cost of duplication or transcription.

(b) The NCER will, however, withhold the transcript or recording of the discussion of any agenda item if the Chairman of the NCER or a NCER Member designated by him determines that the discussion contains information which should be withheld under the same standards as apply for closing meetings under § 705.2.

(c) The NCER will release any transcript or recording withheld under paragraph (b) of this section when the Chairman of the NCER or any person designated by him determines that the grounds for withholding it no longer apply.

(d) A request under paragraph (a) of this section should be directed in writing to the Chief, NCER Staff, ED, should clearly state what is requested, and should contain a promise to pay the costs of any duplication or transcription requested.

§ 705.5 Public announcement.

(a) Except as provided in paragraph (c) and (d) of this section, the NCER will make a public announcement of each meeting at least one week before the meeting takes place. The announcement will cover: (1) The time, place, and subject matter of the meeting; (2) what portions of the meeting, if any, are to be closed to the public; and (3) the name and phone number of the official designated to respond to requests for information on the meeting.

(b) Each such announcement will be promptly made available to selected journals and other appropriate publications. Immediately following the issuance of such an announcement it will be submitted for publication to the FEDERAL REGISTER.

(c) The announcement may be made less than a week before the meeting it announces or after the meeting only if (1) the NCER by record vote determines that agency business requires the meeting to be called on such short or after-the-fact notice and (2) a full announcement is made at the earliest practicable time.

(d) All or any portion of the announcement of any meeting may be omitted if the NCER by record vote determines that the announcement would disclose information which should be withheld under the same standards as apply for closing meetings under § 705.2.

§ 705.6 Meeting changes.

(a) The time or place of a meeting of the NCER that has been publicly announced as provided in § 705.5 may subsequently be changed, but any such change will be publicly announced at the earliest practicable time.

(b) The subject matter of any portion of any meeting of the NCER that has been publicly announced as provided in § 705.5 or the determination whether any portion of any meeting so publicly announced will be open or closed may subsequently be changed, but only when: (1) The NCER determines by record vote that agency business so requires and that no earlier announcement of change was possible, and (2) the NCER publicly announces the change and the vote of each member on the change at the earliest practicable time.

§ 705.7 Record vote.

(a) For purposes of this part of a vote of the NCER is a "record vote" if: (1) It carries by a majority of all those holding office as NCER Members at the time of the vote; (2) no proxies are counted toward the necessary majority; and (3) the individual vote of each Member present and voting is recorded.

(b) Within one day of any such record vote or any attempted record vote that fails to achieve the necessary majority under paragraph (a)(1) of this section, the NCER office will make publicly available a written record showing the vote of each member on the question.

(c) Within one day of any record vote under which any portion or portions of a NCER meeting are to be closed to the public, the NCER office will make available a full written explanation of the NCER's action and a list of all persons expected to attend the meeting, showing their affiliations.

§ 705.8 Application to NCER Committees.

All the provisions of this part applicable to the NCER shall apply equally to the Committees of NCER whenever the Committees are authorized to act on behalf of the NCER.

PART 709—GRANTS FOR RESEARCH ON KNOWLEDGE USE AND SCHOOL IMPROVEMENT

Subpart A—General

Sec.
709.1 Description of the Research on Knowledge Use and School Improvement Program.
709.2 Eligible applicants.
709.3 Regulations that apply to this program.
709.4 Definitions that apply to this program.
709.5 Types of grants.

Subpart B—Projects That Will Be Assisted

709.11 Projects that are eligible for support.
709.12 Projects that are ineligible for support.

Subpart C—How an Application for a Grant is Made [Reserved]

Subpart D—How Grants are Made

709.31 How does the Secretary evaluate an application?
709.32 What selection criteria does the Secretary use?
709.33 How the Secretary selects a new project.

Subpart E—Conditions a Grantee Must Meet

709.41 Restrictions on the items a grant may support.

AUTHORITY. Section 405 of the General Education Provisions Act, as amended (20 U.S.C. 1221e); Section 414 of the Department of Education Organization Act (20 U.S.C. 3474).

SOURCE: 45 FR 53789, Aug. 12, 1980, unless otherwise noted.

Subpart A—General

§ 709.1 Description of the Research on Knowledge Use and School Improvement Program.

(a) Through the Research on Knowledge Use and School Improvement Program, the Department of Education builds a systematic body of knowledge about improvement processes in elementary and secondary schools.

(b) The program explores:

(1) How elementary and secondary schools go about improving educational quality and equity by altering existing administrative and instructional practices, and how knowledge resources in the form of ideas, programs, products, or materials can support these changes;

(2) How bureaucratic, political, economic, cultural and other aspects of school life, such as school-community or school-state relations, affect school changes, and how these influences modify the effects of knowledge resources; and

(3) How knowledge and resources from outside the school district or school can support the different phases of a school improvement process.

(20 U.S.C. 1221e(b)(2))

§ 709.2 Eligible applicants.

Any institution of higher education, State educational agency, local educational agency, public or private nonprofit or for-profit agency, organization, individual, or any combination of these is eligible to apply for a grant award under this program.

(20 U.S.C. 1221e(e)(1))

§ 709.3 Regulations that apply to this program.

In addition to the regulations in this part, the Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (Definitions) apply, except the following:

(1) 34 CFR 75.115 and 34 CFR 75.590 through 75.592, project evaluations.

(2) 34 CFR 75.205 through 75.206, selection criteria.

(20 U.S.C. 3474)

§ 709.4 Definitions that apply to this program.

(a) *Definitions in EDGAR.* The following terms used in these regulations are defined in 34 CFR Part 77:

Applicant
Application
Award
Direct Cost
Government
Local educational agency
Local government
Nonprofit
Public
Secretary
State
State educational agency

(b) *Specific program definitions:* Definitions as used in this part are:

"Major grant" means support for a project whose direct, federally supported costs exceed $15,000.

"Small grant" means support for a project whose direct, federally supported costs do not exceed $15,000 and whose duration is up to 12 months.

(20 U.S.C. 3474)

§ 709.5 Types of grants.

(a) The Secretary invites applications for small and major grant support in an application notice that is published in the FEDERAL REGISTER.

(b) The Secretary initially reserves funds for each of these application categories.

(20 U.S.C. 3474)

Subpart B—Projects That Will Be Assisted

§ 709.11 Projects that are eligible for support.

(a) The program supports only research on knowledge use and school improvement, as described in § 709.1.

(b) Any research process or approach except those listed in § 709.12 is eligible for support.

(20 U.S.C. 1221e(e)(1), 3474)

§ 709.12 Projects that are ineligible for support.

Grants will not be provided to support the planning of a school improvement project or its development, implementation, operation, evaluation, or dissemination.

(20 U.S.C. 1221e(e)(1), 3474)

Subpart C—How an Application for a Grant is Made [Reserved]

Subpart D—How Grants are Made

§ 709.31 How does the Secretary evaluate an application?

(a) The Secretary evaluates a proposal on the basis of the criteria in § 709.32.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum score for each complete criterion is indicated in parentheses.

(20 U.S.C. 3474)

§ 709.32 What selection criteria does the Secretary use?

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b) (1) and (2) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *The significance of the proposed research for American education.* (35 points)

(1) The Secretary reviews each application for information that shows that the project addresses a significant problem of American education.

(2) The Secretary looks for information that shows—

(i) The proposed research is important from the standpoint of basic knowledge and problems of American education;

(ii) The likelihood of a significant addition to existing knowledge, if the project is successful;

(iii) The ability to generalize the project's results; and

(iv) The contribution to improving educational practice and equity at the elementary and secondary school level.

(e) *Conceptual and technical quality.* (35 points)

(1) The Secretary reviews each application for information that shows that the project is of very high conceptual and technical quality.

(2) The Secretary looks for information that shows—

(i) The adequacy of the analysis, conceptualization, design, methods, and instrumentation, as appropriate;

(ii) The extent to which the application exhibits, and builds upon, a thorough grasp of the results of pertinent prior research as well as the problems and issues facing schools as they undergo change;

(iii) Evidence that, where appropriate, there is collaboration between investigators and practitioners in the conduct of the research;

(iv) The likelihood that the proposed project can achieve the intended results; and

(v) The likelihood that the proposed research will be conducted in a manner that benefits the research sites, if appropriate.

(20 U.S.C. 1221e, 3474)

§ 709.33 How the Secretary selects a new project.

(a) Only applications of the highest quality will be funded by the program, even though all available funds may not be exhausted.

(b) In the case of proposals of substantially equal quality, the Secretary considers whether funding a particular project would contribute to a portfolio of studies throughout the nation that collectively address the range of research needs in the area of knowledge use and school improvement.

(20 U.S.C. 3474)

Subpart E—Conditions a Grantee Must Meet

§ 709.41 Restrictions on the items a grant may support.

No funds may be used for construction, repair, remodeling, or alteration of facilities or sites.

(20 U.S.C. 3474)

PART 710—BASIC SKILLS RESEARCH GRANTS PROGRAM

Sec.
710.1 Regulations that apply to the Basic Skills Research Grants Program.
710.2 Purpose.
710.3 Definitions.
710.4 Applicant eligibility.
710.5 Eligible research projects.
710.6 Ineligible projects.
710.7—710.8 [Reserved]
710.9 Evaluation criteria.

AUTHORITY: Sec. 405 of the General Education Provision Act, as amended (20 U.S.C. 1221e), unless otherwise noted.

SOURCE: 41 FR 42662, Sept. 28, 1976, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

§ 710.1 Regulations that apply to the Basic Skills Research Grants Program.

(a) *Regulations.* The following regulations apply to the Basic Skills Research Grants Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and Part 77 (Definitions).

(2) The general provisions for ED grants in 34 CFR Parts 700-702.

(3) The regulations in this Part 710.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Department" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Department programs; and

(2) Applying for assistance under a Department program.

(20 U.S.C. 1221e-3(a)(1))

[45 FR 22544, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 710.2 Purpose.

The purpose of the Basic Skills Research Grants Program is to further the goal of providing American educators with the tools necessary to make further progress in helping all individuals to acquire those skills necessary for full and productive participation in our society. The Basic Skills Research Grants Program will do this by supporting field initiated studies in the substantive areas described in § 710.5.

§ 710.3 Definitions.

As used in this part, "Research project" means a study designed to increase or synthesize basic knowledge about processes or conditions relevant to basic skills development; or to provide answers to research problems which can be utilized in program development or for making policy decisions relating to basic skills development.

§ 710.4 Applicant eligibility.

(a) [Reserved]

(b) Colleges, universities, state and local education agencies, and other public or private agencies, organizations, groups or individuals are eligible to apply.

[41 FR 42662, Sept. 28, 1976, as amended at 45 FR 22545, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 710.5 Eligible research projects.

(a) *Eligible research areas.* An application submitted for a grant under this part must involve research in one of the following selected areas:

(1) *Teaching.* Investigations on the nature of teaching and ways to improve teaching effectiveness.

(2) *Literacy.* Investigations on writing skills, written materials, and reading comprehension.

(3) *Mathematics learning.* Investigations of the nature of mathematical tasks and on the development of mathematical concepts and processes.

(4) *Measurement.* Investigations to improve measurement procedures in basic skills.

(5) *Methodology.* Investigations to improve the quality of results in educational research through studies of methodological problems.

(6) *Law and education.* Investigations of the influence of judicial and legislative activities on educational quality.

(b) *Eligible research processes.* Projects that involve research in one of the selected areas described in paragraph (a) of this section may be carried out using any research process other than those specified in § 710.6.

[43 FR 2878, Jan. 20, 1978. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 710.6 Ineligible projects.

No awards will be made for development, dissemination, demonstrations, or program operations. Examples of ineligible projects include:

(a) Operation of educational programs which are being carried out in a variety of settings, including schools, postsecondary institutions, states, etc.

(b) Improvement of educational programs through the implementation of new or improved procedures, techniques, materials, or equipment.

(c) Course development through the production of a new curriculum or the improvement of an existing curriculum, including the preparation of new instructional material or the modification of instructional material already in existence.

(d) Development or adaptation in an operational setting of any new or improved procedures, techniques, materials, or equipment.

(e) Demonstration projects which show, exhibit, describe, or explain to others, either in person or through various other communications media, the procedures, techniques and materials which must be employed in the execution of a new or modified instructional task or educational program.

(f) Development of new tests or other instruments.

(g) Evaluation of an existing program, curriculum, practice, or piece of equipment.

[41 FR 42662, Sept. 28, 1976, as amended at 43 FR 2879, Jan. 20, 1978. Redesignated at 45 FR 77369, Nov. 21, 1980]

§§ 710.7—710.8 [Reserved]

§ 710.9 Evaluation criteria.

(a) *Substantive areas.* Applications will be evaluated in competition with other applications submitted in the same substantive area, as described in § 710.5(a). In making funding awards, the Secretary will achieve an equitable distribution of projects among all of these substantive areas. An application must address only one of the substantive areas listed in § 710.5(a).

(b) *Criteria for evaluation.* Evaluation of applications will be based upon the following criteria:

(1) Significance of the proposed research for American education, including: (i) Importance of the research topic from the standpoint of basic knowledge or of a problem(s) of American education; (ii) likely magnitude of the addition that will be made to knowledge if the project is successful, including the generalizability of the results.

(2) Quality of the proposed research project, including such considerations as: (i) Adequacy of design, methodology, and instrumentation where appropriate; (ii) likelihood of success of the project; and (iii) extent to which the application exhibits thorough knowledge of pertinent previous work and relates the proposed work to it.

(3) Qualifications of the principal investigator and other professional personnel as evidenced by: (i) Experience and previous research productivity; and (ii) quality of the discussion and analysis in the application.

(4) Adequacy of the facilities and arrangements available to the investigator to conduct the proposed study.

(5) Reasonableness of the budget for the work to be done and the anticipated results.

(c) *Inapplicable criteria.* Evaluation criteria set forth in § 701.10 of this chapter shall not apply to applications submitted under this part.

PART 716—PROGRAM OF RESEARCH GRANTS ON ORGANIZATIONAL PROCESSES IN EDUCATION

Subpart A—General

Sec.
716.1 Description of Program of Research Grants on Organizational Processes in Education.
716.2 Eligible parties.
716.3 Regulations that apply to the Program of Research Grants on Organizational Processes in Education.
716.4 Effective period of the regulations.
716.5 Definitions that apply to this program.

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

716.10 Eligible research projects.
716.11 Ineligible projects.

Subpart C—How Does One Apply for a Grant?

716.20 Application requirements.

Subpart D—How Does the Secretary Make a Grant?

716.30 Selection criteria the Secretary uses to review an application.

AUTHORITY: Sec. 405 of the General Provisions Act, sec. 301(a)(2) of Pub. L. 92-318, 86 Stat. 328, 332, as amended (20 U.S.C. 1221e), unless otherwise noted.

SOURCE: 45 FR 53783, Aug. 12, 1980, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

Subpart A—General

§ 716.1 Description of Program of Research Grants on Organizational Processes in Education.

The Program of Research Grants on Organizational Processes in Education supports studies of how educational organizations, including elementary and secondary schools, school districts, and postsecondary institutions, carry out the essential tasks of any organization, such as setting goals, finding resources, assigning work, monitoring performance, identifying and solving problems, and adapting to changing conditions.

(20 U.S.C. 1221e(b)(2))

§ 716.2 Eligible parties.

A college, university, State or local educational agency, other public or private agency, organization, group, or individual is an eligible applicant.

(20 U.S.C. 1221e(e)(1))

§ 716.3 Regulations that apply to the Program of Research Grants on Organizational Processes in Education.

The following regulations apply to the Program of Research Grants on Organizational Processes in Education:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (Definitions), except the following:

(1) Sections 75.200 through 75.206, selection criteria; and

(2) Sections 75.590 through 75.592, project evaluations.

(b) The general provisions for Department (ED) grants in 34 CFR Parts 700–702.

(c) The regulations in this Part 716.

(20 U.S.C. 3474)

§ 716.4 Effective period of the regulations.

These regulations apply only to awards made prior to December 31, 1981.

(20 U.S.C. 3474)

§ 716.5 Definitions that apply to this program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77 except as otherwise noted: Applicant, Application, Award, Budget (34 CFR 74.104), Department, Direct costs (34 CFR Part 74 Appendix C), Elementary school, EDGAR, Equipment (34 CFR 74.51), Facilities, Fiscal year, Grant (34 CFR 74.3), Indirect costs (34 CFR Part 74 Appendix C), Local educational agency, Private, Project, Public, Secondary school, Secretary, State educational agency, Subcontract (34 CFR 74.3).

(b) *The following terms apply specifically to this program.*

"Arrangements" means provisions for obtaining access to data and to study populations.

"Major grant" means a grant for an amount in excess of $15,000 of direct costs.

"Postsecondary institution" means any public or private nonprofit or for-profit organization that provides instruction at any level beyond secondary education.

"Preliminary proposal" is used interchangeably with "preapplication."

"Proposal" is used interchangeably with "application."

"Research" includes any activity designed to increase or synthesize basic knowledge about one or more processes or conditions relevant to understanding educational organizations and their context.

"Small grant" means a grant for an amount that does not exceed $15,000 of direct costs. (In the case of an indivdual applicant not affiliated with any institution, the ED will not award indirect costs but will reimburse reasonable general and administrative expenses associated with and directly related to the administration of the small grant).

(20 U.S.C. 3474)

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 716.10 Eligible research projects.

Under the Program of Research Grants on Organizational Processes in Education, the Secretary awards both major grants and small grants. The following provisions apply to research funded by this program:

(a)(1) Research funded under this part must be designed to increase or synthesize basic knowledge about one or more organizational processes, or the barriers which impede or prevent these processes, within or related to educational organizations.

(2) Organizational processes include the following:

(i) The means by which an elementary or secondary school, postsecondary institution, or larger administrative unit—

(A) Makes basic policy choices;

(B) Sets goals;

(C) Recruits and assigns personnel;

(D) Chooses and implements courses of action;

(E) Allocates resources;

(F) Establishes organizational forms and structures;

(G) Gathers and processes information on performance, and takes corrective action based on such evaluation; and

(H) Adapts to change.

(ii)(A) Interaction among personnel and among organizational units; and

(B) Changes in processes and interactions within the organization over time.

(b) Studies supported under this program may have potential relevance to other kinds of organizations, but must aim to build a body of data and theory particularly useful in designing and managing educational organizations.

(c) Increased understanding of organizational processes related to elementary and secondary schools and postsecondary institutions may require study of other organizations such as school districts, State or Federal agencies, community groups, and professional associations. Studies supported under this program may include examination of relevant organizations as necessary to advance knowledge about elementary and secondary schools and postsecondary institutions.

(d) A research project may use any research process or approach consistent with the purposes of this section.

(20 U.S.C. 3474)

§ 716.11 Ineligible projects.

A project whose primary purpose is the operation, development, demonstration, or evaluation of specific programs or materials is not eligible for support under this part. Examples of ineligible projects follow:

(a) Operation of an educational program in any elementary or secondary school, postsecondary institution, or other setting or agency.

(b) Development, adaptation, implementation or evaluation of a new or improved instructional, administrative, or managerial procedure, technique, material, training, or piece of equipment.

(c) Course development through the production of a new curriculum or the improvement of an existing curriculum, including the preparation of new instructional material or the modification of instructional material already in existence.

(d) Demonstration, either in person or through communication media, of a technique or material employed in the execution of a new or modified instructional task, educational program, or administrative or management process.

(20 U.S.C. 3474)

Subpart C—How Does One Apply for a Grant?

§ 716.20 Application requirements.

(a) *General.* An applicant shall file an application specifically directed to either the major grant or small grant segment of the Program of Research on Organizational Processes in Education.

(b) *Major grants.* An applicant for a major grant shall comply with the requirements contained in paragraph (b) of this section.

(1) *Preliminary proposal.* An applicant shall submit a preliminary proposal for initial review. Information concerning the strengths and weaknesses of the preliminary proposal and its standing relative to others reviewed will be returned to the applicant and may be used in preparation of the full proposal. The preliminary proposal must include the following:

(i) A cover sheet executed by the principal investigator, and by an individual authorized to execute grant applications for the institution, indicating—

(A) That the preliminary proposal is submitted to the Program of Research Grants on Organizational Processes in Education, Department;

(B) The title of the study;

(C) The name, department, institution, address, and telephone number of each principal investigator;

(D) The estimated budget amount; and

(E) The proposed starting date and duration of the project.

(ii) A statement preferably not exceeding five typewritten pages summarizing the proposed project, including—

(A) A description of the proposed research, its relation to what is already known and to the problems of American education, and the importance of its expected addition to knowledge; and

(B) A description of the procedures to be followed in carrying out the research including where appropriate such concerns as sampling, data acquisition, instrumentation and data analyses.

(iii) A description of the equipment, facilities, and arrangements available to the investigator for conducting the research, including access to suitable organizations for study purposes.

(iv) A vita for each principal investigator, including education, applicable experience, and a list of major publications.

(v) An estimated budget covering direct costs (e.g., salaries and benefits, travel, supplies and materials, communication, services, equipment) and indirect costs proposed to be charged against the grant.

(2) *Full proposal.* A full proposal may only be submitted by an applicant who has submitted a preliminary proposal in the required format, and whose preliminary proposal has been reviewed by ED. Full proposals must include the following elements:

(i) A cover sheet executed by the principal investigator and by an individual authorized to execute grant applications for the institution, indicating—

(A) That the application is submitted to the Program of Research Grants on Organizational Processes in Education, Department;

(B) The title of the study;

(C) The name, department, institution, address, and telephone number of each principal investigator;

(D) The estimated budget amount; and

(E) The proposed starting date and duration of the project.

(ii) An abstract of approximately 200-250 words stating clearly the objectives and plans of the proposed research.

(iii) A table of contents.

(iv) A statement not to exceed forty (40) typewritten pages that describes—

(A) The research objectives, including identification of the problem or issue the proposed research will contribute to solving, the anticipated contribution of the research to that solution, and specific questions the research will address; and

(B) A research design, clearly linked to the questions the study will try to answer. The scientific or technical work of the project and methods for its accomplishment must be stated clearly. A discussion of related research with appropriate citations must be included to show that the investigators are thoroughly familiar with current and prior research in pertinent fields. Data to be obtained and analytic methods to be used upon that data must be explained.

(v) An organization and management plan that describes—

(A) The arrangements intended for direction, coordination, and control of the project;

(B) The roles, responsibilities, and project time-commitments of proposed staff;

(C) A schedule for major portions of multi-year projects; and

(D) An explanation of any expected subcontract arrangements.

(vi) A description of equipment, facilities, and arrangements available for the research. If new data are proposed to be collected, the proposal must give evidence of access to suitable organizations for study purposes. Letters of agreement to participate must be included, showing that relevant authorities in educational or education-related organizations have reviewed the research plans and agree to take part willingly. A lengthy and complex study which could place special burdens on parts of the education community may require joint planning and management of the entire project. A proposal for such a study must give detailed information to allow reviewers to judge the adequacy of the arrangement.

(vii) A plan for the dissemination of the research findings, including methods for reaching researchers, theorists, and practicing educators.

(viii) A vita and bibliography for each professional staff person, including professional background and employment as well as education, a chronological list of publications, and a listing of prior and current research support for each individual including requests now being considered regardless of source.

(ix) An estimate of expenses proposed to be charged against the grant, including direct costs (e.g., salaries and benefits, travel, supplies and materials, communication, services, equipment) and indirect costs. The proposed budget shall include all other details and explanations, and shall be arranged in such a form as to allow the cost analyses and other reviews called for by Departmental grant administration policies.

(c) *Small grants.* (1) An applicant for a small grant shall submit a proposal including all the elements listed in paragraph (b)(2) of this section.

(2) The discussion of objectives and design, as described in paragraph (b)(2) of this section, may not exceed eight typewritten pages.

(20 U.S.C. 3474)

Subpart D—How Does the Secretary Make a Grant?

§ 716.30 Selection criteria the Secretary uses to review an application.

The Secretary uses the following criteria to evaluate all grant proposals:

(a) Significance of the proposed research for American education, including the—

(1) Importance of the research topic from the standpoint of basic knowledge or problems of American education; and

(2) Likely magnitude of the addition that will be made to knowledge if the project is successful, including the generalizability of the results.

(b) Quality of the proposed research project, including the—

(1) Adequacy of the design, methodology, and instrumentation where appropriate;

(2) Likelihood of success of the project; and

(c) Qualifications of the proposed principal investigator and other professional project personnel as evidenced by—

(1) Experience and previous research productivity; and

(2) Quality of the discussion and analysis in the application.

(d) Adequacy of the facilities and arrangements available to the investigator to conduct the proposed study, including evidence of access to necessary organizations, groups, and individuals for study purposes and the willingness of study populations to participate in the proposed research.

(e) Reasonableness of the budget for the work to be done and for the anticipated results.

(f) Whether funding the proposed project would contribute to—

(1) A diversity of projects under the overall program which collectively address a variety of research needs in the area of organizational processes in education;

(2) Other research efforts of ED; or

(3) The educational needs and interests of other Federal agencies.

(20 U.S.C. 3474)

PART 718—EDUCATIONAL EQUITY RESEARCH GRANTS PROGRAM

Sec.

718.1 Regulations that apply to the Educational Equity Research Grants Program.
718.2 Purpose.
718.3 [Reserved]
718.4 Applicant eligibility.
718.5 Eligible projects.
718.6 Ineligible projects.
718.7 [Reserved]
718.8 Review of applications.

Authority: Sec. 405, General Education Provisions Act, as amended (20 U.S.C. 1221e), unless otherwise noted.

Source: 43 FR 43672, Sept. 26, 1978, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

§ 718.1 Regulations that apply to the Educational Equity Research Grants Program.

(a) *Regulations.* The following regulations apply to the Educational Equity Research Grants Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and Part 77 (Definitions).

(2) The general provisions for ED grants in 34 CFR Parts 700-702.

(3) The regulations in this Part 718.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Department" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Department programs; and

(2) Applying for assistance under a Department program.

(20 U.S.C. 1221e-3(a)(1))

[45 FR 22546, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 718.2 Purpose.

The purpose of the educational equity research grants program is to further the goal of educational equity by supporting research and development studies in the substantive areas described in § 718.5.

It is intended that each award will produce knowledge to help determine how every person can best achieve an education of high quality regardless of race, color, religion, sex, national origin, or social class.

§ 718.3 [Reserved]

§ 718.4 Applicant eligibility.

(a) Colleges, universities, State and local educational agencies, other public or private agencies, organizations and groups, and individuals are eligible to apply.

[43 FR 43672, Sept. 26, 1978, as amended at 45 FR 22546, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 718.5 Eligible projects.

(a) *Eligible research and development areas.* An application under this part must propose research or development in no more than one of the following substantives areas:

(1) *Educational equity theories.* This area includes research to develop better educational opportunity theories (including different definitions of equity and ways in which they are applied and with what results). These theories foster the kinds of analyses

leading to public policies aimed at reducing the barriers faced by women and minorities in achieving equality of educational opportunity.

(2) *Desegregation.* This area includes any aspect of desegregation efforts, such as exemplary methods of educating students in desegregated settings and barriers to successful desegregation of institutions and systems of higher education.

(3) *Multicultural/bilingual education.* This area includes:

(i) Educational problems of students (A) who do not speak English, or have limited English speaking ability; (B) who speak nonstandard English; or (C) whose culture differs significantly from the majority of students in the United States, or

(ii) How all children may improve their educational opportunities through multicultural/bilingual education.

(4) *Barriers to women's educational equity.* This area includes any aspect of educational research concerning barriers to educational equity for women, such as, the problems related to sex-role stereotyping and discrimination, the special problems minority women face in obtaining equal educational opportunities and leadership positions, and the particular social and educational processes contributing to inequities and ways to eliminate such problems.

(b) *Eligible research processes.* Projects that involve research or development in one of the selected areas described in paragraph (a) of this section may be carried out using any research or development process other than those specified in § 718.6.

(c) *Selection of areas to be funded.* In the announcement of a closing date for each research grants competition conducted under this program, the director shall indicate which of the areas described in paragraph (a) of this section will be included in that competition.

§ 718.6 Ineligible projects.

A project whose primary purpose is the operation, development or demonstration of specific programs or materials is not eligible for support under this part. Examples of ineligible projects include:

(a) Operation of an educational program;

(b) Improvement of an educational program through the implementation of a new or improved instructional, administrative, or managerial procedure, technique, material, training, or piece of equipment;

(c) Course development through the production of a new curriculum, or the improvement of an existing curriculum, including the preparation of new instructional material or the modification of instructional material already in existence;

(d) Development or adaptation in an operational setting of any new or improved instructional, administrative, or managerial procedure, technique, material, training, or piece of equipment;

(e) A demonstration project which shows, exhibits, describes, or explains to others, either in person or through various other communication media, the procedure, technique, and/or material which must be employed in the execution of a new or modified instructional task, educational program, or administrative or management process.

§ 718.7 [Reserved]

§ 718.8 Review of applications.

(a) *Substantive areas.* In each research grants competition announced under this program, each application will be evaluated in competition with other applications submitted in the same substantive area. The Secretary will seek to distribute awards equitably among the substantive areas selected in accordance with § 718.5(c).

(b) *Criteria for evaluation.* Evaluation of applications will be based upon the following criteria:

(1) Evidence of sensitivity to and awareness of minority and women's concerns as shown by efforts to provide equal employment opportunities, or other exemplary projects.

(2) Significance of the proposal to educational equity and the likelihood of significantly increasing the knowledge base if the project is successful.

(3) Technical quality of the proposal, based upon:

(i) The quality of the research design, methodology, and where appropriate, instrumentation;

(ii) The extent to which the proposal exhibits thorough knowledge of pertinent previous work; and

(iii) The quality of the research evaluation design and the dissemination plan.

(4) Organizational and staff qualifications, based upon:

(i) The experience, previous research, and background of the principal investigator(s);

(ii) The adequacy of facilities and arrangements available for the project, including evidence of access to necessary organizations, groups, and individuals for study or research purposes; and

(iii) The willingness of study populations to participate in the research proposal, as appropriate.

(5) Probability of successful completion of the project, based upon:

(i) The overall balance of tasks to be performed and the adequacy of resources to perform these tasks, including budgetary, personnel, and design considerations;

(ii) The estimated cost of the project in relationship to the anticipated results.

(c) *Inapplicable criteria.* Evaluation criteria set forth in § 701.10 of this chapter shall not apply to applications submitted under this part.

PART 720—LAW AND GOVERNMENT STUDIES IN EDUCATION

Sec.
720.1 Regulations that apply to the Law and Government Studies in Education Program.
720.2 Purpose.
720 3 Definitions.
720.4 Applicant eligibility.
720.5 Eligible projects.
720.6 Ineligible projects.
720.7 General requirements.
720.8 Major grants and small grants.
720.9 Application requirements.
720.10 Review procedures.
720.11 Evaluation criteria.

Appendix A—Administrative Details for a Preapplication for a Major Grant
Appendix B—Administrative Details for a Full Proposal for a Major Grant
Appendix C—Administrative Details for Small Grant Proposals

Authority: Sec. 405 of the General Education Provisions Act, as amended (20 U.S.C. 1221e), unless otherwise noted.

Source: 44 FR 22661, Apr. 16, 1979, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

§ 720.1 Regulations that apply to the Law and Government Studies in Education Program.

(a) *Regulations.* The following regulations apply to the Law and Government Studies in Education Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grants Programs) and Part 77 (Definitions).

(2) The general provisions for ED grants in 34 CFR Parts 700-702.

(3) The regulations in this Part 720.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Department" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Department programs; and

(2) Applying for assistance under a Department program.

(20 U.S.C. 1221e-3(a)(1))

[45 FR 22546, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 720.2 Purpose.

The purpose of the Program of Research Grants on Law and Government Studies in Education is to conduct research on how the legislative, executive, and judicial branches of State and Federal government carry out their responsibilities in the area of education. The research will focus on the formation and implementation of policy, the analysis of government operations affecting education, and the impact of government on education practice. Applicants are encouraged to address issues that concern educational equity, including, but not limited to, the availability of services, patterns of service delivery, and the quantity and quality of those services.

§ 720.3 Definitions.

As used in this part—

"Research" includes any activity designed to increase or synthesize knowledge about the development, implementation, and impact of policymaking regarding educational issues and problems within the context of Federal, State, and local programs.

§ 720.4 Applicant eligibility.

(a) A college, university, State or local educational agency, or other public or private non-profit or for-profit agency, organization, or group, or an individual is an eligible applicant. A grant to a for-profit organization is subject to any special conditions that the Secretary may prescribe.

(b) The Secretary funds no more than one application per grantee or principal investigator under each competition.

§ 720.5 Eligible projects.

(a) Research funded under this part must be designed to increase or to synthesize knowledge about—

(1) How Federal and State legislative, administrative, and judicial policies in education are developed and implemented and how they affect local educational agencies;

(2) How Federal and State government units are organized and managed to administer education; or

(3) How the intergovernmental system might function more effectively in the field of education.

(b) Applications are encouraged to address issues that concern educational equity, including, but not limited to, the availability of services, patterns of service delivery, and the quality and quantity of those services.

§ 720.6 Ineligible projects.

The following projects are ineligible—

(a) A project whose primary purpose is the operation, development, demonstration, or evaluation of specific programs or materials.

(b) A project that examines the implementation and impact of a single education policy—for example, the Education of All Handicapped Children Act (Pub. L. 94-142)—unless it shows promise of significantly increasing our knowledge about—

(1) The role of law in education;

(2) The role of various government operations in affecting educational practice; or

(3) The public administration of education at State and Federal levels.

(c) Litigation, research in support of litigation, or other legal advocacy activities.

(d) Legal advice on the implementation of particular education laws or regulations.

§ 720.7 General requirements.

(a) The following are general requirements for all projects funded under this program. Each project shall—

(1) Provide arrangements for obtaining advice about the use of the concepts and methods from scholarly disciplines and from education practice for the design of the project and the application of its results;

(2) Seek advice from minority group members, women, and educational practitioners during project planning and as the work progresses;

(3) Provide a detailed report and assessment of the work carried out by the project; and

(4) Prepare and disseminate information about—

(i) The nature and progress of the project;

(ii) The results of project; and

(iii) Recommendations and instructions for adopting the results of the project in whole or in part in other locations.

[44 FR 22661, Apr. 16, 1979, as amended at 45 FR 22546, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 720.8 Major grants and small grants.

(a) *General.* The Secretary awards major grants and small grants under this part. The same topic areas for investigation, eligibility standards, and evaluation criteria apply to all awards under this part. A simplified application procedure is provided for an application for a small grant, as provided in § 720.9, and the duration of a small grant award is limited to a maximum of 12 months, as provided in § 720.12.

(b) *Major grants.* A major grant is for an amount in excess of $10,000 of direct costs.

(c) *Small grants.* A small grant is awarded for no longer than 12 months duration and for an amount that does not exceed $10,000 plus indirect costs (except in the case of an individual applicant not affiliated with any institution, in which case the Secretary does not award indirect costs but reimburses reasonable general and administrative expenses associated with and directly related to administration of the small grant). Approximately 10 to 15 percent of the funds available for this program are reserved for small grant awards.

§ 720.9 Application requirements.

(a) *General.* An applicant shall file an application specifically directed to either the major grant or the small grant segment of the program.

(b) *Major grants.* An applicant for a major grant shall comply with the requirements contained in this paragraph and in Appendices A and B.

(1) *Preapplications.* An applicant shall submit a preapplication for initial review in the format prescribed in Appendix A.

(c) *Small grants.* An applicant for a small grant shall comply with the requirements contained in Appendix C. An applicant for a small grant does not have to submit a preapplication.

[45 FR 22546, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 720.10 Review procedures.

(a) In the research grants competition announced under this program, major grant and small grant applications form two separate review categories. Within each category, individual applications are reviewed and evaluated in competition with the other applications in that category.

[44 FR 22661, Apr. 16, 1979, as amended at 45 FR 22546, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 720.11 Evaluation criteria.

(a) *Criteria.* The Secretary uses the following criteria to evaluate each preliminary, full, and small grant proposal:

(1) Significance of the proposed research for American education, including its potential contribution to—

(i) Fundamental knowledge about enduring and significant problems of American Government in relation to education, including but not limited to issues of educational equity; and

(ii) The improvement of educational practice at the regional, State, and local level.

(2) The quality of the plans describing how the proposed research can or will be used to improve educational practice.

(3) The quality of the proposed research project, including—

(i) Adequacy of the design, methodology, instrumentation, and generalizability of the results;

(ii) Likelihood of success for the project;

(iii) The extent to which the application exhibits thorough knowledge of pertinent previous work and relates the proposed work to it;

(iv) Evidence that, where appropriate, the perspectives of a variety of disciplines are combined;

(v) Evidence that the grantee or investigators collaborate with practitioners during the definition of research questions and during the progress of the study; and

(vi) Evidence that the research is conducted in a manner that benefits the participants in the reserach settings.

(4) Qualifications of the proposed grantee or principal investigator and other professional personnel as evidenced by—

(i) Experience and previous research productivity;

(ii) Quality of the discussion and analysis in the application;

(iii) Evidence of awareness and sensitivity to the special concerns of any target population to benefit from the research; and

(iv) Evidence that the practical and research experience of the grantee or principal investigator and others are appropriate for the topics, subjects, and settings of the study.

(5) Adequacy of the facilities and arrangements available to the grantee or investigator to conduct the proposed study, including evidence of access to

necessary organizations, groups, and individuals for study purposes and the willingness of study populations to participate in the proposed research.

(6) Reasonableness of the budget for the work to be done and for the anticipated results.

(b) *Diversity of projects.* In making awards the Secretary considers, in addition to the criteria in paragraph (a) of this section, the objectives of funding a diverse set of projects that collectively address—

(1) A variety of research needs in the area of law and government studies in education;

(2) Other research needs of the Department; or

(3) The educational needs and interests of other Federal agencies.

(c) *Inapplicable criteria.* General criteria in 34 CFR 701.10 of this chapter do not apply to applications submitted under this part.

(d) *Disposition of application.* Following the review of an application the Secretary either—

(1) Approves the application in whole or in part for the amount of funds and subject to the conditions the Secretary finds appropriate for the completion of the approved project;

(2) Disapproves the application; or

(3) Defers action on the application in a case where additional information is sought.

APPENDIX A—ADMINISTRATIVE DETAILS FOR A PREAPPLICATION FOR A MAJOR GRANT

(a) *Format.* This appendix provides guidance to applicants concerning the preparation of preapplications for major grants. An applicant who does not follow these suggestions will not be ruled ineligible, but may not be ranked as highly under the evaluation criteria. The statement summarizing the project, paragraph (2) below, must not exceed 10 double-spaced, typewritten pages. The preapplication should include the following:

(1) A cover sheet completed by the applicant or principal investigator—and, if required by the applicant institution, by an individual authorized to complete grant applications for the institution—indicating—

(i) That the preapplication is submitted to the Program of Research Grants on Law and Government Studies in Education, ED;

(ii) The title of the study;

(iii) The name, department, institution, address, and telephone number of each proposed grantee or principal investigator;

(iv) The estimated budget amount; and

(v) The proposed starting date and duration of the project.

(2) [Reserved]

(3) A description of the facilities and arrangements available to the grantee or investigator for conducting the research including access to suitable organizations for study purposes.

(4) A vita for each grantee or principal investigator, including education, applicable experience, and a list of major publications.

(5) An estimated budget covering direct costs, (e.g., salaries and benefits, travel, supplies and materials, communications, services, equipment) and indirect costs to be charged against the grant.

[44 FR 22661, Apr. 16, 1979, as amended at 45 FR 22546, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

APPENDIX B—ADMINISTRATIVE DETAILS FOR A FULL PROPOSAL FOR A MAJOR GRANT

(a) *Format.* This appendix provides guidance to applicants concerning the preparation of full proposals for major grants. An applicant who does not follow these suggestions will not be ruled ineligible, but may not be ranked as highly under the evaluation criteria. Discussion of objectives and design, paragraphs (4) and (5) below, must not exceed *50* double-spaced typewritten pages. A full proposal for a major grant should include the following elements:

(1)—(3) [Reserved]

(4) A statement of the research objectives, including identification of the problems or issues that the proposed research will contribute to solving, the anticipated contribution of the research to that solution, and the specific questions that the research will address.

(5) A research design clearly linked to the questions that the study will try to answer. The scientific or technical work of the project and methods for its accomplishment should be stated clearly. A discussion of related research with appropriate citations should be included to show that the applicant or principal investigator is thoroughly familiar with current and prior research in pertinent fields. Data to be obtained and analytic methods to be used should also be explained.

(6) [Reserved]

(7) Letters of agreement to participate should be included, showing that the relevant authorities in school or school-related organizations have reviewed the research plans and agree to take part willingly. A

lengthy and complex study that could place special burdens on parts of the education community may require joint planning and management of the entire project. A proposal for such a study should give detailed information to allow reviewers to judge the adequacy of the arrangement.

(8) A plan for the dissemination of the research findings, including methods for reaching researchers, theorists, practicing educators, and policymakers and implementers.

[44 FR 22661, Apr. 16, 1979, as amended at 45 FR 22546, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

APPENDIX C—ADMINISTRATIVE DETAILS FOR SMALL GRANT PROPOSALS

(a) *Format.* This appendix provides guidance to applicants concerning the preparation of small grant proposals. An applicant who does not follow these suggestions will not be ruled ineligible, but may not be ranked as highly under the evaluation criteria. Discussion of the objectives and design, paragraphs (4) and (5) below, must not exceed *15* double-spaced, typewritten pages. A proposal for a small grant should include the following elements:

(1)–(3) [Reserved]

(4) A statement of the research objectives, including identification of the problems or issues that the proposed research will contribute to solving, the anticipated contribution of the research to that solution, and the specific questions that the research will address.

(5) A research design clearly linked to the questions that the study will try to answer. The scientific or technical work of the project and methods for its accomplishment should be stated clearly. A discussion of related research with appropriate citations should be included to show that the applicant or principal investigator is thoroughly familiar with current and prior research in pertinent fields. Data to be obtained and analytic methods to be used should also be explained.

[44 FR 22661, Apr. 16, 1979, as amended at 45 FR 22546, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

PART 726—CAPACITY-BUILDING FOR STATISTICAL ACTIVITIES IN STATE AGENCIES

Sec.
726.01 Scope of this document.
726.01-1 Regulations that apply to this program.
726.02 Purpose of the Capacity-Building Program.
726.03 Definitions.
726.04 Nature of projects.
726.05 Allowable costs.
726.06 [Reserved]
726.07 Eligibility.
726.08—726.09 [Reserved]
726.10 Selection criteria.

APPENDIX—ELIGIBLE AGENCIES WITH STATEWIDE RESPONSIBILITY FOR POSTSECONDARY EDUCATION

AUTHORITY: Section 406 (b)(3) and (e) of the General Education Provision Act (20 U.S.C. 1221-1 (b)(3) & (e)), unless otherwise noted.

SOURCE: 44 FR 40613, July 11, 1979, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

§ 726.01 Scope of this document.

(a) This document establishes procedural and substantive requirements and criteria governing applications and grants under the Capacity-Building Program of the National Center for Education Statistics.

[44 FR 40613, July 11, 1979, as amended at 45 FR 22538, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 726.01-1 Regulations that apply to this program.

(a) *Regulations.* The following regulations apply to the Capacity-Building Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and Part 77 (Definitions);

(2) The regulations in this Part 726.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Department" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Department programs; and

(2) Applying for assistance under a Department program.

(20 U.S.C. 1221e-3(a)(1))

[45 FR 22538, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 726.02 Purpose of the Capacity-Building Program.

The purpose of this program is to build the statistical capabilities of

State agencies by facilitating improvements or automation in their statistical systems.

[45 FR 22538, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 726.03 Definitions.

The following definitions apply to terms used in these regulations:

"Capacity-Building" means developing or improving long-term capabilities or competencies.

"State agency" means—

(a) A State educational agency;

(b) A State agency listed in the appendix to these regulations with statewide responsibility for postsecondary education or, if there is no agency for that purpose, an officer or agency designated by the Governor or by State law; or

(c) The State board or agency designated or established as the sole State agency responsible for the administration, or for the supervision of the administration, of programs authorized by Part A, Title I of the Vocational Education Act of 1963, as amended by Pub. L. 94-482.

"Statistical activities" means activities concerned with collecting, processing, analyzing, or reporting statistical data about education.

[44 FR 40613, July 11, 1979, as amended at 45 FR 22538, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980, and further amended at 45 FR 86300, Dec. 30, 1980]

§ 726.04 Nature of projects.

(a) A State agency may apply for a grant under this program to develop or enhance its long-term capability to collect, process, analyze, or report statistical data about elementary/secondary, postsecondary, or vocational education.

(b) The grant may focus on a reduction of data burden; improvement in the timeliness of data reporting; improvement in the quality, comparability, or utility of data; increase in analytical capability; improvement in the flow of information to local educational agencies or other agencies of the State; or similar statistical objectives.

(c) Grant activities may include but are not limited to planning, training, consultant services, staff development, or activities which will promote automation.

[44 FR 40613, July 11, 1979, as amended at 45 FR 22538, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 726.05 Allowable costs.

(a) [Reserved]

(b) Funds awarded under this document must be used to supplement, and in no case supplant, the level of funds that would, in the absence of a grant, be made available by the State agency for statistical activities.

(c) [Reserved]

[44 FR 40613, July 11, 1979, as amended at 45 FR 22538, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 726.06 [Reserved]

§ 726.07 Eligibility.

(a) Only a State agency is eligible for a grant.

(b) The Secretary initially reserves funds to award grants under each of the categories of "State agency" defined in § 726.03.

(c) A State agency may submit only one application under each notice of closing date.

[44 FR 40613, July 11, 1979, as amended at 45 FR 22538, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§§ 726.08—726.09 [Reserved]

§ 726.10 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new grants. The maxmium score for all of the criteria is 100 points.

(a) *Plan of operation.* (18 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (14 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (9 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

CROSS-REFERENCE: 34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (3 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Significance of project.* (37 points).

The significance of the project in improving the long-term statistical capability of the State agency, as measured by a reduction of data burden; improvement in the timeliness of data reporting; improvement in the quality, comparability, or utility of data; increase in educational agencies, institutions of higher education, or other agencies of the State; or similar statistical objectives.

(g) *Commitment.* (14 points) The adequacy of the educational agency's commitment and arrangements made to ensure the long-term effect of the proposed activities after the expiration of Federal funds.

(20 U.S.C. 1221-1(b)(3)6(e))

[46 FR 5390, Jan. 19, 1981]

APPENDIX—ELIGIBLE AGENCIES WITH STATEWIDE RESPONSIBILITY FOR POSTSECONDARY EDUCATION

Alabama

Alabama Commission on Higher Education, One Court Square, Suite 221, Montgomery, Alabama 36104

Alaska

Alaska Commission on Postsecondary Education, Pouch F, State Office Building, Juneau, Alaska 99811

Arizona

Arizona Commission for Postsecondary Education, 1650 W. Alameda Drive, Suite 115, Tempe, Arizona 85282

State Board of Regents, 1535 West Jefferson, Phoenix, Arizona 85007

Arizona State Board of Directors of Community Colleges, 1535 West Jefferson, Room 123, Phoenix, Arizona 85007

Arkansas

Department of Higher Education, 1301 West 7th Street, Little Rock, Arkansas

California

California Postsecondary Education Commission, 1020 12th Street, Sacramento, California 95814

Colorado

Commission on Higher Education, 1550 Lincoln Street, #210, Denver, Colorado 80203

Connecticut

Board of Higher Education, P.O. Box 1320, 340 Capital Avenue, Hartford, Connecticut 06101

Delaware

Delaware Postsecondary Education Commission, 800 Delaware Avenue, Suite 703, Wilmington, Delaware 19801

District of Columbia

District of Columbia Commission on Postsecondary Education, 1329 E Street, N.W., Suite 1023, Washington, D.C. 20004

Florida

Florida Department of Education, W. V. Knott Building, Tallahassee, Florida 32304

Georgia

Board of Regents of the University System, 244 Washington Street, S.W., Atlanta, Georgia 30334

Hawaii

Hawaii State Postsecondary Education Commission, 2444 Dole Street, Room 207, Honolulu, Hawaii 96822

Idaho

State Board of Education, Len B. Jordan Building, 650 West State Street, Room 307, Boise, Idaho 83702

Illinois

Illinois Board of Higher Education, 500 Reisch Building, 4 West Old Capitol Square, Springfield, Illinois 62701

Indiana

Indiana Commission for Higher Education, 143 West Market Street, Suite 400, Indianapolis, Indiana 46204

Iowa

Higher Education Facilities Commission, 201 Jewett Building, 914 Grand Avenue, Des Moines, Iowa 50309

Board of Regents, Grimes State Office Building, Des Moines, Iowa 50319

Area Schools and Career Education Branch, Department of Public Instruction, Grimes State Office Building, Room 203, Des Moines, Iowa 50319

Kansas

Legislative Educational Planning Committee, State House, Fifth Floor, Topeka, Kansas 66612

Board of Regents, Merchants National Bank Tower, 800 Jackson, #1416, Topeka, Kansas 66612

Community-Junior Colleges, State Department of Education, 120 East Tenth Street, Topeka, Kansas 66612

Kentucky

Council on Higher Education, West Frankfort Office Complex, U.S. Route 127 South, Frankfort, Kentucky 40601

Louisiana

State Board of Regents, One American Place, Suite 1530, Baton Rouge, Louisiana 70804

Maine

State Board of Education, State Department of Education and Cultural Services, State Department of Education Building, Augusta, Maine 04333

University of Maine, 107 Maine Avenue, Bangor, Maine 04401

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Maryland

State Board of Higher Education, 16 Francis Street, Jeffrey Building, Annapolis, Maryland 21401

Massachusetts

Board of Higher Education, Park Square Building, Room 632, 31 Saint James Avenue, Boston, Massachusetts 02116

Michigan

State Board of Education, P.O. Box 30008, Lansing, Michigan 48909

Minnesota

Minnesota Higher Education Coordinating Board, Capitol Square Building, Suite 400, 550 Cedar Street, Saint Paul, Minnesota 55101

Mississippi

Postsecondary Education Planning Board, Universities Center, Suite 116, 1855 Eastover Drive, Jackson, Mississippi 39211

Board of Trustees of State Institutions of Higher Learning, P.O. Box 2336, Jackson, Mississippi 39205

Division of Junior Colleges, State Department of Education, P.O. Box 771, Jackson, Mississippi 39205

Missouri

Department of Higher Education, 600 Clark Avenue, Jefferson City, Missouri 65101

Montana

Board of Regents of Higher Education, 33 Last Chance Gulch, Helena, Montana 59601

Nebraska

Nebraska Coordinating Commission for Postsecondary Education, 301 Centennial Mall South, P.O. Box 95005, Lincoln, Nebraska 68509

Nevada

Nevada Higher Education Commission, University of Nevada System, 405 Marsh Avenue, Reno, Nevada 89502

New Hampshire

New Hampshire Postsecondary Education Commission, 66 South Street, Concord, New Hampshire 03301

New Jersey

State Department of Higher Education, 225 West State Street, Trenton, New Jersey 08625

New Mexico

Board of Educational Finance, Legislative—Executive Building Suite 201, Santa Fe, New Mexico 87503

New York

Regents of the University of the State of New York, The State Education Department, Albany, New York 12234

North Carolina

University of North Carolina, P.O. Box 6888, Chapel Hill, North Carolina 27514

State Department of Community Colleges, State Board of Education, 194 Education Building, Raleigh, North Carolina 27611

North Dakota

Board of Higher Education, State Capitol Building, Bismarck, North Dakota 58501

Ohio

Ohio Board of Regents, 30 East Broad Street, 36th Floor, Columbus, Ohio 43215

Oklahoma

Oklahoma State Regents for Higher Education, 500 Education Building, State Capitol Complex, Oklahoma City, Oklahoma 73105

Oregon

Oregon Educational Coordinating Commission, 495 State Street, Salem, Oregon 97310

Pennsylvania

Pennsylvania Department of Education, P.O. Box 911, Harrisburg, Pennsylvania 17126

Rhode Island

Department of Education, 199 Promenade Street, Providence, Rhode Island 02908

South Carolina

South Carolina Commission on Higher Education, Rutledge Building, Room 1104, 1429 Senate Street, Columbia, South Carolina 29201

South Dakota

Education and Cultural Affairs Planning Commission, South Dakota Department of Education and Cultural Affairs, Office of the Secretary, Pierre, South Dakota 57501

Board of Regents, State Office Building #3, Pierre, South Dakota 57501

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Tennessee

Tennessee Higher Education Commission, 501 Union Building, #300, Nashville, Tennessee 37219

Texas

Coordinating Board, Texas College and University System, P.O. Box 12788, Capitol Station, Austin, Texas 78711

Utah

Utah State Board of Regents, 807 East South Temple Street, Suite 204, Salt Lake City, Utah 84102

Vermont

Vermont Higher Education Planning Commission, c/o Budget and Management Department, Pavilion Building, 5th Floor, 109 State Street, Montpelier, Vermont 05602

Virginia

State Council of Higher Education for Virginia, 700 Fidelity Building, 9th and Main Streets, Richmond, Virginia 23219

Washington

Council for Postsecondary Education, 908 East Fifth Street, Olympia, Washington 98504

West Virginia

West Virginia Board of Regents, 950 Kanawha Boulevard, East, Charleston, West Virginia 25301

Wisconsin

University of Wisconsin, 1700 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin 53706

Board of Vocational-Technical and Adult Education, 4802 Sheboygan Avenue, 7th Floor, Madison, Wisconsin 53702

Wyoming

University of Wyoming, P.O. Box 3334, University Station, Laramie, Wyoming 82071

Community College Commission, Boyd Building, 5th Floor, 1720 Carey Avenue, Cheyenne, Wyoming 82002

American Samoa

Board of Higher Education, c/o American Samoa Community College, P.O. Box 2609, Pago Pago, American Samoa 96799

Guam

Postsecondary Education Commission, Board of Regents, University of Guam, Post Office Box E K, Agana, Guam 96910

Puerto Rico

Commonwealth Postsecondary Education Commission, University of Puerto Rico Station, Box F, San Juan, Puerto Rico 00931

Trust Territory of the Pacific Islands

Micronesia Board of Education, Department of Education, Office of the High Secretary, Saipan, Mariana Islands 96950

Virgin Islands

Virgin Islands Commission on Postsecondary Education, c/o College of the Virgin Islands, Saint Thomas, Virgin Islands 00801

PART 745—WOMEN'S EDUCATIONAL EQUITY ACT PROGRAM

Subpart A—General

Sec.
745.1 Women's Educational Equity Act Program: Purpose.
745.2 Eligible applicants.
745.3 Regulations that apply to the Women's Educational Equity Act Program.
745.4 Definitions.
745.5 Equity in education.
745.6 Equity for all women: Diverse approaches.
745.7 Participation by men: Nondiscrimination.
745.8 Evaluation.
745.9 Indirect costs.
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Subpart B—Projects of General Significance

745.20 Authorized activities.
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745.22 Program priorities—General.
745.23 Priority for model projects on Title IX compliance.
745.24 Priority for model projects on educational equity for racial and ethnic minority women and girls.
745.25 Priority for model projects on educational equity for disabled women and girls.
745.26 Priority for model projects to influence leaders in educational policy and administration.
745.27 Priority for model projects to eliminate persistent barriers to educational equity for women.
745.28 Award decisions.
745.29 Evaluation criteria.

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745.30 Evaluation criterion: Need and impact. (24 points)
745.31 Evaluation criterion: Objectives. (16 points)
745.32 Evaluation criterion: Plan of operation. (40 points)
745.33 Evaluation criterion: Applicant's commitment to educational equity for women. (10 points)
745.34 Evaluation criterion: Staff qualifications. (10 points)
745.35 Evaluation criterion: Innovative approaches. (5 points)

AUTHORITY: Title IX, Part C, of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978, Pub. L. 95-561, 92 Stat. 2298-2301 (20 U.S.C. 3341-3348), unless otherwise noted.

SOURCE: 45 FR 22737, Apr. 3, 1980, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

Subpart A—General

§ 745.1 Women's Educational Equity Act Program: Purpose.

The purpose of the Women's Educational Equity Act Program is to award grants to—

(a) Promote educational equity for women in the United States; and

(b) Enable educational agencies and institutions to meet the requirements of Title IX of the Education Amendments of 1972 (relating to nondiscrimination on the basis of sex in Federally assisted education programs).

(20 U.S.C. 3341(b))

§ 745.2 Eligible applicants.

Public agencies, nonprofit private agencies, organizations, and institutions—including student and community groups—and individuals are eligible to receive grants.

(20 U.S.C. 3342(a))

§ 745.3 Regulations that apply to the Women's Educational Equity Act Program.

(a) The following regulations apply to the Women's Educational Equity Act Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and Part 77 (Definitions).

(2) The regulations in this Part 745.

(b) If any provision in other regulations conflict with any provision in this part, the provision in this part applies.

(20 U.S.C. 1221e-3(a)(1))

§ 745.4 Definitions.

"Act" means the Women's Educational Equity Act of 1978.

"Council" means the National Advisory Council on Women's Educational Programs established under section 936 of the Act.

"Discrimination on the basis of sex" means the denial of opportunity, privilege, role, or reward on the basis of sex, regardless of whether that denial is prohibited by law.

"Educational equity for women" means—

The elimination in educational institutions, programs and curricula of discrimination on the basis of sex and of those elements of sex role stereotyping and sex role socialization that prevent full and fair participation by women in educational programs and in American society generally;

The responsiveness of educational institutions, programs, curricula, policymakers, administrators, instructors, counselors, and other personnel to the special educational needs, interests, and concerns of women that arise from inequitable educational policies and practices; and

The elimination of stereotyping by sex, so that both men and women can choose freely among and benefit from opportunities in educational institutions and programs with limitations determined only by each individual's interests, aptitudes, and abilities.

"Sex role stereotyping" means attitudes and actions that reflect assumptions that because females or males share a common gender, they also share common abilities, interests, values, and roles.

"Title IX" means Title IX of the Education Amendments of 1972. (Pub. L. 92-318).

(20 U.S.C. 3341-3348)

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§ 745.5 Equity in education.

A project must be designed to advance equity for women in education and may address issues of women's rights only within education.

(20 U.S.C. 3341(b))

§ 745.6 Equity for all women: Diverse approaches.

(a) A project that proposes to address the needs of all women shall address the diverse needs of racial and ethnic minority women, disabled women, women of various socio-economic and geographical backgrounds, and women of various age groups.

(b) A project may focus on the particular needs of women from one or more of these groups.

(c) A grantee shall use approaches to the achievement of educational equity appropriate for the groups on which the project focuses.

(20 U.S.C. 3341(b))

§ 745.7 Participation by men: Nondiscrimination.

Nothing in these regulations prohibits men and boys from participating in any project or activity funded under this part.

(20 U.S.C. 3343(b))

§ 745.8 Evaluation.

(a) In addition to the requirements in 34 CFR 75.590-75.592 (EDGAR) a grantee shall cooperate with the Council in fulfilling its mandate to evaluate projects assisted under the Act.

(b) Before making an award, the Secretary requires an applicant to submit a detailed expansion of the evaluation plan submitted with the application, unless the application contained a detailed plan that the Secretary approves without changes.

(20 U.S.C. 3343(a)(3), 3347)

§ 745.9 Indirect costs.

The provisions governing indirect costs in 34 CFR 75.560-75.568 (EDGAR) apply. Individuals may not receive indirect costs.

(20 U.S.C. 1221e-3(a)(1))

§ 745.10 Allowable costs.

The Secretary makes funds available only to pay costs that are directly related to the operation of an approved project.

(20 U.S.C. 3342(a))

§ 745.11 Payments for training and for participation in the testing of materials and programs.

(a) *General.* (1) The Secretary allows the payment of stipends, travel costs, and child care costs to persons who participate in training provided under a grant and to persons who participate in field testing of materials and programs developed under a grant.

(2) The Secretary approves these payments only if the applicant or grantee demonstrates that the payments are necessary to achieve the objectives of the project.

(3) Participants in training or in field testing activities may receive stipends only if they are not otherwise paid for the time during which they participate in the training or field testing.

(b) *Stipends for short-term training and for testing materials and programs.* (1) Short-term training is part-time or full-time training with a duration of less than one academic year.

(2) *Educational personnel.* Payments to educational personnel may be at the rate of up to $30 for each full day of participation, up to $150 a week. For days involving fewer than 5 hours of attendance, payments may be at the rate of up to $6 an hour, subject to the weekly limit of $150. However, if participating educational personnel are covered by a collective bargaining agreement in which the minimum hourly rate for an individual is more than $6 an hour, they may be paid at the rate provided under the agreement.

(3) *Non-educational personnel.* Payment to non-educational personnel, such as parents, students, and school bus drivers, may be made at rates that are not lower than the current Federal minimum wage rate nor higher than the rate for educational personnel.

(c) *Reimbursement for substitutes.* (1) If an educational agency pays teachers or other educational personnel to participate in short-term training or field testing activities and must hire substitutes for those personnel, the grantee may use funds to reimburse the agency to pay these substitutes.

(2) Rates for substitutes may not exceed the rates set out in paragraph (b)(3) of this section.

(3) A grantee may pay either a stipend to a participant, or a reimbursement for the hiring of a substitute for that participant, but may not pay both.

(d) *Stipends for long-term training.* (1) Long-term training is full-time or part-time training with a duration of at least one academic year.

(2) Stipends for participants in long-term training may not exceed $2925 for a nine month academic year or $3900 for a twelve month academic year.

(e) *Tuition and fees.* The Secretary makes funds available to cover the costs of tuition and fees for participants in a grantee's long-term training project if the grantee demonstrates that payment of these costs is necessary to achieve the objectives of the project.

(20 U.S.C. 3342(a))

Subpart B—Projects of General Significance

§ 745.20 Authorized activities.

(a) Grants may support demonstration, developmental, and dissemination activities that promote educational equity for women and girls at any level of education, including preschool, elementary and secondary education, higher education, and adult education.

(b) Types of authorized activities include:

(1) The development and evaluation of curricula, textbooks, and other educational materials.

(2) Model training programs for educational personnel.

(3) Research and development projects.

(4) Guidance and counseling activities, including the development of nondiscriminatory tests.

(5) Educational activities to increase opportunities for adult women, including continuing educational activities and programs for underemployed and unemployed women.

(6) Expansion and improvement of educational programs and activities for women in vocational education, career education, physical education, and educational administration.

(c) A project must have national, statewide, or general significance.

(20 U.S.C. 3342(a))

§ 745.21 Types of awards.

(a) *General Grants.* The Secretary may award a general grant for demonstration, developmental, or dissemination activities—at any level of education—designed to promote educational equity for women.

(b) *Small Grants.* The Secretary may award a small grant, not to exceed $25,000, to support an innovative approach to educational equity for women.

(c) *Contracts.* The Secretary may award a contract for a particular purpose to promote educational equity for women in accordance with the requirements of the Act and 41 CFR Chapters 1 and 34.

(20 U.S.C. 3342(a))

§ 745.22 Program priorities—General.

(a) The Secretary establishes priorities for general grants to ensure that available funds are used for projects that are likely to achieve the purpose of the Act most effectively. The priorities appear in §§ 745.23–745.27.

(b) Each year, the Secretary selects one or more of the priorities and allocates funds to each selected priority.

(c) Each year in the application notice, the Secretary announces the selected priorities and the approximate amount of funds allocated to each priority.

(d) (1) Applicants may submit applications under one or more selected priorities. Applicants must identify the priorities under which they wish to compete in their applications.

(2) Applications under a priority compete against other applications under that priority for funds allocated to the priority.

(e) (1) An applicant may propose a project that is not under a priority, but is within the scope of the authorized activities described in § 745.20. These applications compete for funds not allocated to any priority.

(2) If an applicant fails to identify a priority, the application competes with other applications that are not under a selected priority.

(f) (1) Each year the Secretary may select one or more of the priorities establised for general grants to apply to small grants.

(2) In any year that the Secretary establishes priorities for small grants, the procedures in paragraphs (b) through (e) of this section apply.

(20 U.S.C. 3345)

§ 745.23 Priority for model projects on Title IX compliance.

(a) The Secretary gives priority to applications for the development of model programs and materials to enable educational agencies and institutions to meet the requirements of Title IX.

(b) The purpose of this priority is to develop a variety of models for use by local educational agencies and others that are eligible to apply for grants to conduct projects of local significance under section 932(a)(2) of the Act.

(c) Throughout the development and testing of model programs and materials, a grantee shall attempt to address the problems that local educational agencies and other users might have in implementing the models.

(d) An applicant may propose to develop models for one or more types of users, such as local educational agencies, State educational agencies, institutions of higher education, or community groups.

(e) An applicant may propose to develop models to address one or more Title IX issues.

(f) An applicant may propose activities which address areas not covered by Title IX, such as textbooks, if these activities are directly related to other activities designed to meet the requirements of Title IX.

(g) An applicant may focus on one or more groups, such as counselors, teachers, students, parents, principals, faculty, administrators, athletic directors, or deans.

(20 U.S.C. 3345)

§ 745.24 Priority for model projects on educational equity for racial and ethnic minority women and girls.

(a) The Secretary gives priority to applications for projects that focus on educational equity for women and girls who are members of racial and ethnic minority groups.

(b) The purpose of this priority is to address issues of double discrimination, bias, and stereotyping on the basis of sex and race or ethnic origin.

(20 U.S.C. 3345)

§ 745.25 Priority for model projects on educational equity for disabled women and girls.

(a) The Secretary gives priority to applications for projects that focus on educational equity for women and girls who are disabled.

(b) The purpose of this priority is to address issues of double discrimination, bias, and stereotyping on the basis of sex and disability.

(20 U.S.C. 3345)

§ 745.26 Priority for model projects to influence leaders in educational policy and administration.

(a) The Secretary gives priority to applications for model projects designed to increase commitment to Title IX compliance and to educational equity for women among individuals and organizations that affect education policy.

(b) The purpose of this priority is to encourage institutional change by assisting policymakers, administrators, and organizations to take positive steps to ensure Title IX compliance and educational equity for women.

(c) A project may focus on individuals responsible for policy making and administration of educational institutions, such as local educational agency or university administrators, school board members, or members of boards of trustees.

(d) A project may focus on organizations that influence educational policy and practice, such as professional associations, student organizations, parent-teacher associations, or labor unions.

(20 U.S.C. 3345)

§ 745.27 Priority for model projects to eliminate persistent barriers to educational equity for women.

(a) The Secretary gives priority to applications that address persistent barriers to achieving educational equity. Projects may focus on barriers that have received little attention in the past. Projects may also focus on barriers that past efforts have been unsuccessful in reducing.

(b) An applicant may propose to develop and demonstrate new approaches, or approaches that have not been tried in a particular area, that have the potential for substantial success but also have few guarantees of success.

(c) Projects may focus on one or more issues related to persistent barriers to the achievement of educational equity for women.

(d) An applicant shall demonstrate in its application the significance of the issue to the achievement of educational equity for women and the persistence of the barrier to be addressed.

(20 U.S.C. 3345)

§ 745.28 Award decisions.

(a) The Secretary prepares a rank ordering of the applications under each selected priority, and of those under no priority, on the basis of—

(1) The evaluation criteria in §§ 745.30-745.34, in the case of general grants; or

(2) The evaluation criteria in §§ 745.30-745.35, in the case of small grants.

(b) The Secretary selects projects on the basis of the following:

(1) The projects' quality based on the evaluation criteria.

(2) The need for projects that collectively—

(i) Address the diverse needs of women among various population groups;

(ii) Address all levels of education, including preschool, elementary and secondary education, higher education, and adult education;

(iii) Use a variety of strategies for addressing needs; and

(iv) Include a variety of grantees, such as community, student and women's organizations, including those that have a substantial membership of minority or disabled women.

(3) The need to avoid duplication of projects that have already been funded.

(4) The need for geographic distribution of projects throughout the Nation.

(20 U.S.C. 3345)

§ 745.29 Evaluation criteria.

The evaluation criteria in §§ 745.30-745.34 apply to an application for a general grant. The evaluation criteria in §§ 745.30-745.35 apply to an application for a small grant. The number of points awarded for each criterion depends on how well the application addresses all the factors under the criterion. The total possible score for a general grant application is 100 points. The total possible score for a small grant application is 105 points.

(20 U.S.C. 3345)

§ 745.30 Evaluation criterion: Need and impact. (24 points)

The Secretary determines the extent to which:

(a) The proposed project focuses on needs that are central to the purpose of the Act. (9 points)

(b) The applicant documents the significance of the needs addressed by the project. (7 points)

(c) The applicant shows knowledge of similar projects in the subject area and shows how this project makes a distinct contribution. (4 points)

(d) The model program, product, or results of the proposed project has national, statewide, or general significance to the achievement of educational equity for women. (4 points)

(20 U.S.C. 3345)

§ 745.31 Evaluation criterion: Objectives. (16 points)

The Secretary determines the extent to which:

(a) The proposed project establishes objectives which are likely to meet the identified needs. (8 points)

(b) The proposed project describes a realistic approach to meeting the objectives. (8 points)

(20 U.S.C. 3345)

§ 745.32 Evaluation criterion: Plan of operation. (40 points)

The Secretary determines the extent to which:

(a) The strategy and activities proposed to implement the project are likely to accomplish the project's objectives successfully. (8 points)

(b) The applicant plans to develop the project in cooperation with representative groups relevant to the project's success, such as potential participants, community representatives, women's groups, students, key administrators, teachers, or faculty. (7 points)

(c) The applicant demonstrates that the project will address or can be adapted to address the educational equity needs of racial and ethnic minority group women. (8 points)

(d) The applicant sets out an effective management plan including appropriate resource allocation, realistic schedules, and a sufficient amount of time to be spent on the project by the proposed staff members. (8 points)

(e) The applicant describes an effective general plan for evaluation. (3 points)

(f) The budget and narrative show that proposed costs are reasonable in relation to the objectives and scope of the project. (6 points)

(20 U.S.C. 3345)

§ 745.33 Evaluation criterion: Applicant's commitment to educational equity for women. (10 points)

(a) The Secretary determines the extent to which the applicant demonstrates its commitment to educational equity for all women, including racial and ethnic minority women and disabled women.

(b) Among the factors the Secretary considers in determining the applicant's commitment to educational equity for all women, are—

(1) The applicant's staffing pattern, with emphasis on employment of women in positions in which they have been underrepresented;

(2) The applicant's recruiting methods; and

(3) The applicant's other efforts to ensure educational equity for all women.

(20 U.S.C. 3345)

§ 745.34 Evaluation criterion: Staff qualifications. (10 points)

(a) The Secretary determines the extent to which:

(1) The project director has the qualifications and capability to conduct the project successfully. (6 points)

(2) The staff has the qualifications and capability to implement the project successfully. (4 points)

(b) In evaluating the qualifications and capability of the project director and staff, the Secretary considers—

(1) Formal educational training;

(2) Employment or volunteer experience;

(3) Experience in designing, managing, or implementing similar projects; and

(4) Experience in addressing issues of women's educational equity in various contexts and settings, such as community groups.

(20 U.S.C. 3345)

§ 745.35 Evaluation criterion: Innovative approaches. (5 points)

The Secretary considers the extent to which the applicant for a small grant demonstrates how the project uses a new or untried approach to achieving educational equity for women in a particular area.

(20 U.S.C. 3345)

PART 752—METRIC EDUCATION PROGRAM

Subpart A—General

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AUTHORITY: Part B of Title III of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561, 92 Stat. 2211 (20 U.S.C. 2951), unless otherwise noted.

SOURCE: 45 FR 22753, Apr. 3, 1980, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

EFFECTIVE DATE NOTE: At 46 FR 42848, Aug. 25, 1981, Part 752 was removed effective Oct. 1, 1982.

Subpart A—General

§ 752.1 What is the Metric Education Program?

The Metric Education Program encourages educational agencies and institutions to develop programs to prepare students to use the metric system of measurement. Under this program, the Secretary awards grants and procurement contracts for metric education projects to encourage the voluntary use of the metric system of measurement.

(20 U.S.C. 2951-2952)

§ 752.2 Who is eligible to receive an award?

(a) The following are eligible to receive an award:

(1) State educational agencies (SEAs), local educational agencies (LEAs) and other public agencies and organizations,

(2) Public and private institutions of higher education (including junior and community colleges) and other private organizations; and

(3) Any two or more of the parties above.

(b) A grant may only be made to a public agency or nonprofit private organization or institution.

(20 U.S.C. 2952)

§ 752.3 What regulations apply to the Metric Education Program?

The following regulations apply to the Metric Education Program:

(a) The Education Department General Administrative Regulations (EDGAR), Part 75 (Direct Grant Program) and Part 77 (Definitions);

(b) The regulations in this Part 752; and

(c) For procurement contracts, the applicable provisions of the Federal Procurement Regulations, 41 CFR Chapters 1 and 34.

(20 U.S.C. 2951-2953)

§ 752.4 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in these regulations are defined in Part 77: Applicant, Application, Award, Secretary, Elementary school, Local educational agency (LEA), Nonprofit, Nonpublic elementary or secondary school, Private, Project, Public, Secondary school and State educational agency (SEA).

(b) *Specific program definitions.* As used in these regulations—"Act" means the Metric Education Act of 1978, Part B of Title III of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561 (Education Amendments of 1978).

"Adaptation" means the modification of a metric educational strategy or plan to meet the particular needs of a specific learner population.

(20 U.S.C. 2951-2952)

"Institution of higher education" (IHE) means an institution as defined in Section 1001 of the Elementary and Secondary Education Act of 1965, as amended.

(20 U.S.C. 3381)

"Interdisciplinary" means the involvement of two or more academic disciplines, for example, the involvement of disciplines that may include, but are not limited to, mathematics and science.

"Learner population" means the group intended to benefit directly from or to participate in a metric education project.

"Metric system" or the "Metric system of measurement" means the International System of Units (SI) as interpreted or modified for the United States by the Secretary of Commerce. SI was established in 1960 by the General Conference on Weights and Measures under the Treaty of the Meter and includes the meter (length), Kilogram (mass), second (time), Kelvin (thermodynamic temperature), Ampere (electric current), candela (luminous intensity), and the mole (amount of substance). The radian (plane angle) and the steradian (solid angle) are supplementary units of the system.

(20 U.S.C. 2951-2952)

Subpart B—What Kinds of Projects does the Department Assist Under This Program?

§ 752.10 What categories of activities are supported?

(a) *Metric education project grants.* To encourage the voluntary use of the metric system of measurement, funds are awarded for metric education projects. These projects may include but are not limited to the following types of activities:

(1) Training educational personnel to teach and carry out projects in the use of the metric system of measurement. This may include inservice and preservice training of teachers and other educational personnel.

(2) Developing an interdisciplinary metric curriculum.

(3) Developing and disseminating effective metric instructional materials (including existing materials).

(4) Developing, demonstrating, improving, expanding, continuing, or adapting metric education projects.

(5) Developing a statewide and multi-state metric education plan. This may include developing a master metric education interdisciplinary curriculum plan that sets forth metric education objectives, strategies, and activities for a variety of academic subjects which are taught in the schools of the local educational agencies.

(6) Developing metric education curriculum and instruction for use in institutions of higher education for purposes other than teacher training.

(7) Developing special strategies for supporting metric education projects in rural or isolated areas. This may include the use of mobile units (such as vans or other vehicles) to reach and provide metric instruction to persons in those areas.

(b) The Secretary may, in any given year, select priorities for funding from one or more of the activities above upon publication of a notice in the FEDERAL REGISTER.

(c) *Procurement contracts.* The Secretary may award procurement contracts under this program to support activities, usually national in scope, to meet the needs of the Metric Education Program. Requests for proposals are solicited for contracts in the Commerce Business Daily. The Secretary does not award contracts for activities that duplicate activities that are typically conducted under a grant.

(20 U.S.C. 2952)

§ 752.11 What are the outcomes of an effective metric education project?

A grantee receiving assistance under this part must demonstrate effective methods for—

(a) Improving the long-term capabilities of individuals to use and teach the metric system of measurement;

(b) Developing or adapting new techniques and approaches to meet the metric educational needs of the learner population(s);

(c) Identifying and using local and other resources for metric education purposes;

(d) Supporting new or existing metric educational activities of educational agencies and institutions;

(e) Continuing successful project activities after Federal funding is ended; and

(f) Evaluating the metric educational activities in meeting the project's objectives.

(20 U.S.C. 2952)

Subpart C—How Does One Apply for a Grant?

§ 752.20 What rules must be followed?

The Secretary only makes a grant to an eligible applicant that—

(a) Submits an application; and

(b) Complies with all procedural rules governing the submission of the application.

(20 U.S.C. 2953)

Subpart D—How is a Grant Made?

§ 752.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 752.31.

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses at the end of that criterion.

§ 752.31 What selection criteria does the Secretary use?

(a) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(vi) For grants made after October 1, 1980, if the applicant is a local educational agency or State educational agency, a clear description of how the applicant will provide an opportunity for participation of students enrolled in nonprofit private schools. (20 points)

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use in the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally under-represented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training in fields related to the objectives of the project, as well as other information that the applicant provides. (14 points)

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project. (10 points)

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See § 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable. (10 points)

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate. (6 points)

(f) *Needs.* The Secretary reviews each application for information that shows the extent to which the applicant—

(1) Provides for an effective response to the assessed metric education needs of the learner population;

(2) Focuses on enabling the learner population to acquire measurable skills for using the metric system of measurement; and

(3) Provides for the feasible participation by the learner population in planning project activities that contribute to their acquisition of measurable skills in using the metric system of measurement. (10 points)

(g) *Staff needs.* The Secretary reviews each application for information that shows the extent to which the proposed project responds to staff development needs in metric education. (8 points)

(h) *Outcomes.* The Secretary reviews each application for information that shows the extent to which the applicant—

(1) Contributes to the incorporation of metric educational activities and strategies into the regular educational program of the funded agency or institution;

(2) Contributes to metric education approaches that involve students in a sequence of problem solving activities that require concrete solutions and examples;

(3) Has a high potential for contributing to the cost effective adaptation, expansion, and replication of project strategies and activities in the regular educational programs of other agencies; and

(4) Includes a strategy for continuing support after Federal funding is ended. (12 points)

(i) *Dissemination.* The Secretary reviews an application for information that shows the extent to which the applicant—

(1) Provides a clear description of a planned strategy (including mechanisms) for the dissemination of successful and promising metric education products and instructional strategies and practices which are developed and implemented by the project staff; and

(2) Provides a description of plans for non-participants to capitalize on the skills acquired by project participants. (10 points)

Subpart E—What Conditions Must Be Met by the Grantee?

§ 752.40 Are there restrictions on the types of costs that may be supported?

(a) Allowable costs under a grant are subject to cost principles provided or referenced in §§ 75.530 through 75.535 of EDGAR.

(b) Funds may be used for the following types of travel:

(1) Travel by the project director or his or her designee to attend the national or regional conference sponsored by the Metric Education Program; and

(2) Travel by the project director or by the project's instructional staff to visit or to provide services at the grantee's project training site(s).

(c) Funds may be used for the purchase, replacement, and adaptation of metric measurement apparatus, e.g., metric measurement devices, scales, etc., and other instructionally essential metric supplies and materials if the Secretary determines that they are necessary for carrying out the proposed metric education project. These costs are limited to 20 percent of the direct costs of the award.

(d) Funds may not be used for the provision of stipends, dependency allowances, substitute pay, or the purchase of textbooks that are not specifically for metric instruction.

(e) Funds may not be used by a private agency, organization or institution for the payment of costs of the regular instructional program.

(20 U.S.C. 5952)

§ 752.41 Must State and local educational agencies provide an opportunity for private school students to participate?

(a) If an SEA or LEA receives a grant under this program, section 302 of the Elementary and Secondary Education Act requires that the agency provide an opportunity for participation by students enrolled in private elementary and secondary schools. EDGAR establishes the rules for their participation (See EDGAR § 75.650).

(b) In SEA and LEA projects supporting the training of educational personnel, the grantee shall provide to educational personnel of private schools in the area served by the project, an opportunity to participate in this training on a basis comparable to that provided for educational personnel in the public schools.

(20 U.S.C. 2942(b), 2951-2953)

PART 753—ARTS IN EDUCATION PROGRAM

Subpart A—General

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AUTHORITY: Part C, Title III of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978, Pub. L. 95-561, 92 Stat. 2212 (20 U.S.C. 2961).

SOURCE: 46 FR 4608, Jan. 16, 1981, unless otherwise noted.

EFFECTIVE DATE NOTE: At 46 FR 42848, Aug. 25, 1981, Part 753 was removed effective Oct. 1, 1982.

Subpart A—General

§ 753.1 Arts in education program.

The Arts in Education Program assists in establishing, conducting or improving programs in which the arts are an integral part of elementary and secondary school curricula.

(20 U.S.C. 2962)

§ 753.2 Eligible parties.

(a) State educational agencies (SEAs), local educational agencies (LEAs), and public or private nonprofit agencies, organizations, and institutions are eligible to apply for grants.

(b) Agencies, organizations, and institutions may include, but are not limited to, libraries, museums, theaters, arts councils and centers, colleges and universities, performing arts groups, and parent, youth, and civic organizations.

(20 U.S.C. 2942, 2962)

§ 753.3 Regulations that apply to this program.

The following regulations apply to grants under the Arts in Education Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (General); and

(b) The regulations in this Part 753.

(20 U.S.C. 1221e-3, 2962)

§ 753.4 Definitions.

In addition to the definitions in 34 CFR Part 77 of EDGAR, the following definitions apply in these regulations:

"Arts" includes, but is not limited to, music, dance, drama, folk art, creative writing, architecture and allied fields, painting, sculpture, photography, graphic and craft arts, industrial design, costume and fashion design, motion pictures, television, radio, and tape and sound recording; the presentation, performance, execution, and exhibition of these art forms; and the study and application of the arts to the human environment.

(20 U.S.C. 2961, 952(b), Pub. L. 89-209)

"Rural or small community" means a geographic area other than a State.

"Urban or large community" means a standard metropolitan statistical area (the area in and around a city of fifty thousand inhabitants or more as defined by the Office of Management and Budget).

(20 U.S.C. 2962, 3207)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 753.10 What are the required elements of an arts in education project?

The Secretary assists an arts in education project only if it is designed to—

(a) Integrate one or more of the arts into the regular educational curricula of the schools served; and

(b) Provide opportunities for all students in the schools served to acquire skills and understanding in and through arts media.

(20 U.S.C. 2961, 2962)

Subpart C—How Does One Apply for a Grant?

§ 753.20 What limitations apply to applicants?

The Secretary approves no more than one project application from an applicant in a fiscal year, whether or not the application is filed jointly with that of other applicants.

(20 U.S.C. 1221e-3, 2962)

§ 753.21 What are the application requirements?

An applicant must demonstrate, on the application form furnished by the Secretary, that the proposed project meets the requirements of the Act and applicable regulations. An applicant should address each funding criterion.

Cross references:

EDGAR § 75.127-129 (Group applications).

EDGAR § 75.138-141 (Open meeting).

§ 302(b) of the ESEA, EDGAR § 75.650 (Participation of students in private schools).

(20 U.S.C. 1221e-3, 2962)

§ 753.22 What are the requirements for State review of local applications?

(a) The SEA, working with the State arts education advisory committee (such as the Alliance for Arts Education Committee), if any, may review and comment on local applications.

(b) The local applicant must send a copy of its application to the SEA, at the same time it sends the application to the Secretary. The application must show that a copy was sent to the SEA.

(c) To ensure that its comments are considered in the application review, an SEA should send its comments to the Secretary no later than 30 days after the closing date for receipt of applications.

(20 U.S.C. 1221e-3, 2962)

Subpart D—How Is a Grant Made?

§ 753.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 753.31.

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses.

(d) The Secretary may decline to approve applications that are within the funding priorities of other Federal agencies.

(20 U.S.C. 2962)

§ 753.31 What selection criteria does the Secretary use?

(a) *Plan of Operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(vi) If the applicant is a State or local educational agency, how the applicant will provide an opportunity for the participation of children in private schools.

(b) *Quality of key personnel.* (7 points)

(1) The Secretary reviews each application for information that shows the quality of key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (3 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Needs assessment.* (5 points)

The Secretary reviews each application for information that shows the extent to which the applicant—

(1) Identifies and analyzes, objectively and comprehensively, the need for arts education programs in the area to be served; and

(2) Establishes clear and measurable objectives that relate to the identified needs.

(g) *Coordination and collaboration.* (15 points)

(1) The quality of the applicant's plan to mobilize and coordinate activities of all agencies, organizations, and institutions involved. In judging this criterion, the Secretary considers the applicant's description of how and why each entity is cooperating in the project.

(2) The consistency with plans and activities previously carried out in arts education including the State plan for arts education, if any.

(3) The extent to which the applicant has developed and will employ effective methods, throughout the project period, for continuing consultation with the groups involved.

(h) *Arts integration.* (10 points)

The extent to which the project is designed to integrate the major arts (for example, dance, music, theater, and the visual arts) into the regular educational program of the schools served.

(i) *Commitment.* (15 points)

The extent to which the applicant's activities to make the arts an integral part of the elementary and secondary school curricula are likely to continue and expand when Federal assistance for the project ends.

(j) *Results.* (15 points)

(1) The extent to which the project is likely to result in new or innovative approaches, methods, or materials designed to achieve the purpose of the Act; and

(2) The likelihood that the materials to be developed by the project would be useful and effective for other potential users.

(k) *Special needs.* (10 points)

The extent to which the project is designed to serve the special needs of the handicapped, gifted, and underprivileged.

(l) *Diversity—geographic and programmatic.* To ensure geographic and programmatic diversity, the Secretary may add up to 10 points to the score of an application that will contribute to—

(1) An equitable geographic distribution of arts education programs throughout the United States in both urban and rural areas; and

(2) A variety in types of projects funded that collectively demonstrate diverse approaches to arts education.

(20 U.S.C. 2962)

§ 753.32 Are priorities for funding established?

(a) The Secretary funds projects in the following categories:

(1) State-wide projects;

(2) Urban or large community projects; and

(3) Rural or small community projects.

(b)(1) The Secretary decides annually how many grants to award in each category based on:

(i) The number of applications in each category;

(ii) The relative quality of the applications; and

(iii) The Secretary's goal to achieve a reasonable balance among projects funded in these categories.

(2) Through advance notice in the FEDERAL REGISTER, the Secretary may announce the distribution by category of previously funded projects eligible for non-competing continuation and its effect on new awards under paragraph (b)(1)(iii) of this section.

(20 U.S.C. 2962)

§ 753.33 What is the length of a project period?

(a) The Secretary usually approves a project for a maximum of three years. The budget period is twelve months.

(b) In deciding whether or not to make a continuation award within the approved project period, the Secretary considers the factors in § 75.253 of EDGAR.

(20 U.S.C. 1221e-3, 2962)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 753.40 What are the limitations on costs?

(a) A grantee may not use federal funds for—

(1) Direct student financial aid; or

(2) Salaries for regular, full-time instructional personnel.

(b) A grantee may use up to ten percent of total project costs for outside evaluation of the project.

(20 U.S.C. 2962)

PART 755—FINANCIAL ASSISTANCE FOR CONSUMERS' EDUCATION PROJECTS

Subpart A—General

Sec.

755.1 What is the Consumers' Education Program?
755.2 Who is eligible to receive an award?
755.3 What regulations apply to the Consumers' Education Program?
755.4 What definitions apply specifically to this program?

Subpart B—What Kinds of Projects Does the Department Assist Under this Program?

755.10 What are the purposes of the projects?
755.11 What categories of activities are supported?
755.12 What subject matter may be included?
755.13 Will particular program subject matter be emphasized?

Subpart C—How Does One Apply for a Grant?

755.20 How does an applicant apply for funds?

Subpart D—How Is a Grant Made?

755.30 What selection criteria does the Secretary use?
755.31 What is the duration of a project?

Subpart E—What Conditions Must a Grantee Meet?

755.40 Are there restrictions on the kind of items a grant may support?
755.41 What other restrictions apply?
755.42 What provisions are made for participation of private school students?

AUTHORITY: Part E of Title III of the Elementary and Secondary Education Act as amended by Pub. L. 95-561, 92 Stat. 2214 (20 U.S.C. 2981-2986), unless otherwise noted.

SOURCE: 45 FR 22760, Apr. 3, 1980, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

EFFECTIVE DATE NOTE: At 46 FR 42848, Aug. 25, 1981, Part 755 was removed effective Oct. 1, 1982.

Subpart A—General

§ 755.1 What is the Consumers' Education Program?

The Consumers' Education Program supports educational projects designed to assist consumers in developing the skills, knowledge, and understanding which will allow them to function effectively in the marketplace and in their roles as consumer-citizens. Support is through grants and procurement contracts.

(20 U.S.C. 2983)

§ 755.2 Who is eligible to receive an award?

(a) *Grants.* The following are eligible to receive grants:

(1) Local educational agencies (LEAs);

(2) State educational agencies (SEAs);

(3) Institutions of higher education;

(4) Public agencies and non-profit private organizations, including, for example, State, county, or city government agencies, libraries, educational service agencies, labor unions, and

(5) Other non-profit private organizations including local, regional, and national consumer and community organizations or groups.

(b) *Procurement contracts.* The parties in paragraph (a) of this section and private profit-making organizations are eligible to receive procurement contracts.

(20 U.S.C. 2983)

§ 755.3 What regulations apply to the Consumers' Education Program?

(a) *Regulations.* The following regulations apply to the Consumers' Education Program:

(1) The Education Department General Administrative Regulations

(EDGAR) in Part 75 (Direct Grant Programs) and Part 77 (Definitions);

(2) The regulations in this Part 755; and

(3) For procurement contracts, the applicable provisions of the Federal Procurement Regulations, 41 CFR, Chapters 1 and 3.

(b) *Definitions in EDGAR.* The following terms used in the part are defined in Part 77:

"Applicant"
"Application"
"Budget"
"Secretary"
"Contract"
"EDGAR"
"Elementary school"
"Facilities"
"Grant"
"Institution of higher education"
"Local educational agency"
"Non-profit"
"Private"
"Program"
"Project"
"Public agency"
"Secondary school"
"State educational agency"

(20 U.S.C. 2981)

§ 755.4 What definitions apply specifically to this program?

(a) As used in these regulations—

"Act" means the Consumer Education Act of 1978, Part E of Title III of the Elementary and Secondary Education Act, as amended by Pub. L. 95-561.

"Consumers' education" means the process by which consumers:

(1) Develop skills to make informed decisions in the purchase of goods and services in light of personal values, maximum utilization of resources, available alternatives, ecological considerations, and changing economic conditions;

(2) Become knowledgeable about the laws, rights, and methods of recourse in order to participate effectively and self-confidently in the marketplace and take appropriate action to seek consumer redress; and

(3) Develop and understanding of the consumer-citizen role in the economic, social, and government systems and how to influence those systems to make them responsive to consumers' needs.

"Curriculum" means an organized course of study. This includes print and non-print learning materials.

"Educational service agency" means an agency, formed jointly by several LEAs or by State law, to provide to those LEAs special services including, but not limited to, audio-visual aids, vocational training, data processing, and classes for the handicapped.

"Resources" means materials, personnel, methods, or information.

"Short-term training" means training for individual project participants that lasts less than an academic year. This training is usually in the form of workshops, seminars, or similar activities.

"Target group" means the specific group to benefit from or participate in a project.

"Technical assistance" means expert help provided to another agency, organization, or group, in the form of training, planning, consulting, or other specialized services.

(20 U.S.C. 2983)

Subpart B—What Kinds of Projects Does the Department Assist Under This Program?

§ 755.10 What are the purposes of the projects?

The purposes of the projects are to—

(a) Provide one or more elements of consumers' education as defined in § 755.4;

(b) Increase the capacity of the applicant to continue the benefits of its consumers' education services on a long-term basis;

(c) Develop new methods, materials, or activities that may be duplicated or adapted by other groups; or

(d) Develop models or new activities with the potential for long-term local, State, regional, or national benefits.

(20 U.S.C. 2983)

§ 755.11 What categories of activities are supported?

(a) *Grants.* Grants are awarded through a yearly competition to eligible parties in § 755.2(a). These grants are for projects *initiated by the appli-*

cants, which support activities designed to:

(1) Establish pilot or demonstration projects, or augment existing projects conducted by the parties listed in § 755.2(a);

(2) Provide short-term training to prepare employees of these parties to plan, organize, and conduct consumers' education projects or teach consumer-related subject matter. Long-term training is not supported;

(3) Establish or expand pilot or demonstration projects to serve the needs of special groups including the elderly, Native Americans, persons with limited English-speaking ability, the handicapped, and urban and rural low-income groups;

(4) Research, develop, pilot test, evaluate, and disseminate curricula and other activities and materials in consumers' education; and

(5) Provide consumers' education at the elementary, secondary and higher education levels by State and local educational agencies and institutions of higher education.

(b) *Procurement contracts.* Procurement contracts are awarded to eligible parties in § 755.2(b) to support activities, usually national in scope, which are *initiated by the Secretary* to meet the needs of the Consumers' Education Program. Requests for Proposals (RFPs) are solicited through Commerce Business Daily, published by the Department of Commerce. Projects are designed to:

(1) Research, test, assess, evaluate, and disseminate existing consumers' education activities and materials, including those not otherwise assisted under this program;

(2) Disseminate information and provide developmental and technical assistance to agencies and organizations that are planning, developing, or carrying out consumers' education projects;

(3) Prepare and distribute consumers' education materials by the use of mass media or other appropriate means; and

(4) Support research and other activities the Secretary determines are necessary for the development of the Consumers' Education Program.

(20 U.S.C. 2981-2983)

§ 755.12 What subject matter may be included?

Consumers' education projects may include, but need not be limited to, the following—

(a) Basic economics of the marketplace.

(b) Management of personal and financial resources.

(c) Purchase of goods and services such as food, transportation, credit, insurance, housing, repairs, health care, and legal assistance.

(d) Methods of consumer self-reliance and alternatives to the use of scarce or costly goods, services, or resources.

(e) Consumer laws, rights, responsibilities, and redress.

(f) Government assistance and services such as social security and education.

(g) The role of the consumer in determining energy, conservation, and ecological policies.

(h) Individual or collective consumer participation in the economic and governmental systems, including the regulatory and legislative processes.

(i) Special issues and problems, such as advertising or product safety.

(j) Areas of critical, timely importance in which consumer action can limit costs, such as energy, housing, food, and health care (including medical services and insurance).

(k) Emerging issues for consumers.

(20 U.S.C. 2983)

§ 755.13 Will particular program subject matter be emphasized?

The Secretary may, in any given year, emphasize projects in one or more of the subject matters in § 755.12. This emphasis of subject matter would be published as a notice in the FEDERAL REGISTER.

(20 U.S.C. 2983)

Subpart C—How Does One Apply for a Grant?

§ 755.20 How does an applicant apply for funds?

The "Introduction to Department Grant Programs" at the beginning of the Educational Division General Administration Regulations (EDGAR) includes general information on—

(a) How to use regulations that apply to Department programs; and

(b) How to apply for a grant under a Department Program.

(20 U.S.C. 2984)

Subpart D—How is a Grant Made?

§ 755.30 What selection criteria does the Secretary use?

(a) The Secretary evaluates an application for a grant on the basis of the selection criteria contained in these regulations which are specific to the Consumers' Education Program. Applicants are advised to read these criteria carefully.

(b) The following selection criteria total 100 points. The maximum number of points for each criterion indicates the relative importance assigned to the criterion. In evaluating the applications, the Secretary looks for:

(1) *Project Design.* A project design which:

(i) Describes the consumer education needs of the target group; offers evidence that the target group supports the project; provides access to project activities to traditionally underrepresented groups; and, for grants made after October 1, 1980, if the applicant is a local educational agency or a State educational agency, contains a clear description of how the applicant will provide an opportunity for participation of students enrolled in private, non-profit schools; (10 points)

(ii) States specific goals which relate to the Consumers' Education Program, are relevant to stated needs, and are attainable within the time period of the grant; (5 points)

(iii) Identifies project activities related to the goals and describes how these activities will produce practical and significant results for the target group; (15 points) and

(iv) Reflects knowledge of present consumer education practices and resources, coordinates with other organizations where appropriate, and is innovative in concept. (10 points)

(2) *Management Plan.* A plan to ensure proper and efficient project administration which;

(i) Presents a time and work schedule that includes the use of resources and staff and the sequence of activities; (10 points) and

(ii) Clearly spells out the duties of key personnel, provides access to employment to traditionally underrepresented groups, and indicates the amount of time each person will commit to the project. (5 points)

(3) *Applicant qualifications.* Information on:

(i) Qualifications of the director and other key personnel, including consumer education experience or experience in the types of activities to be carried out in the project; (10 points) and

(ii) The extent and quality of agency or organization experience in consumer education or related activities. (5 points)

(4) *Evaluation.* A plan for:

(i) Evaluation of activities as they take place; (4 points) and

(ii) Evaluation of final outcomes of the project. (4 points)

(5) *Impact of the Project.* An impact which:

(i) Results in models that can be duplicated or adapted by others; (8 points) and

(ii) Increases the capacity of the applicant to continue the benefits of the project after the grant period. (7 points)

(6) *Budget.* A project budget which shows:

(i) Adequate funds to support the project activities and reasonable cost in relation to the Consumers' Education Program activities. (7 points)

§ 755.31 What is the duration of a project?

Consumers' education grants under this part are for a period of 12 consecutive months.

(20 U.S.C. 2984)

Subpart E—What Conditions Must A Grantee Meet?

§ 755.40 Are there restrictions on the kind of items a grant may support?

(a) Funds may not be used for construction, repair, remodeling, or alteration of facilities or sites.

(b) Allowable costs are subject to the applicable cost principles provided or referenced in §§ 75.530 through 75.535 of EDGAR.

(20 U.S.C. 2984)

§ 755.41 What other restrictions apply?

Grants may be used to supplement or increase funds made available by the applicant for the project. Grants may not be used to supplant these funds.

(20 U.S.C. 2984)

§ 755.42 What provisions are made for participation of private school students?

If an SEA or LEA receives a grant under this program, section 302 of the Elementary and Secondary Education Act requires that agency to provide for participation by students enrolled in private elementary and secondary schools. EDGAR establishes the rules for this participation (See EDGAR, § 75.680).

(20 U.S.C. 2942)

PART 757—LAW RELATED EDUCATION

Subpart A—General

Sec.
757.1 The Law-Related Education Program.
757.2 What regulations apply to the Law-Related Education Program?
757.3 Who is eligible to apply?
757.4 Definitions.

Subpart B—What Kinds of Activities Does the Secretary Support Under This Program?

757.10 What are the eligible projects; priorities?
757.11 Non-duplication of procurements.
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Sec.

Subpart C—How Does One Apply for a Grant?

757.20 What limitations apply to applications?

Subpart D—How Is a Grant Made?

757.30 How does the Secretary evaluate an application?
757.31 What criteria are used to evaluate applications for elementary and secondary school projects?
757.32 What criteria are used to evaluate applications for exemplary projects?
757.33 What is the duration of support?

Subpart E—What Conditions Must Be Met by a Grantee?

757.40 What are the limitations on allowable costs?

AUTHORITY: Part G of Title III of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561, 92 Stat. 2216 (20 U.S.C. 3001-03).

SOURCE: 46 FR 3879, Jan. 16, 1981, unless otherwise noted.

EFFECTIVE DATE NOTE: At 46 FR 42848, Aug. 25, 1981, Part 757 was removed effective Oct. 1, 1982.

Subpart A—General

§ 757.1 The Law-Related Education Program.

(a) The Law-Related Education Program is designed to give persons knowledge and skills pertaining to the law, the legal process, and the legal system, and the fundamental principles and values on which these are based.

(b) The purpose of law-related education is to enable non-lawyers, including children, youth, and adults, to be more informed and effective citizens.

(c) Law-related education may include a variety of learning approaches in such subject areas as—

(1) Fundamental legal principles and the values on which they are based;

(2) The Bill of Rights and other constitutional law;

(3) The role and limits of law in a democratic society both past and present;

(4) The Federal, State, and local lawmaking process;

(5) The role of law in avoiding and resolving conflicts;

(6) Development and administration of specific rules of law by Federal, State or local government and examination in a general or theoretical way of how rules of governance are developed and administered;

(7) The administration of the criminal, civil and juvenile justice systems;

(8) Issues of authority, freedom, enforcement, and punishment;

(9) Law as a vehicle to illuminate and resolve social and political issues;

(10) Areas of law that affect the daily lives of citizens (e.g., criminal, consumer, labor, education, administrative, environmental, and family law);

(11) Comparative law that examines law and its role in different societies and cultures;

(12) Indian law; and

(13) The application of the above and other law-related subject areas to school policies and practices.

(d) Law-related education does not include direct training for careers in law. It does not include programs designed exclusively or primarily to provide information to persons preparing for or working in a particular profession on a specific law or set of laws that affect that profession.

(20 U.S.C. 3001, 3002; S. Rep. No. 95-856, Pages 41-42)

§ 757.2 What regulations apply to the Law-Related Education Program?

The following regulations apply to grants under the Law-Related Education Act: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (General); and (b) The regulations in this part 757.

(20 U.S.C. 1221e-3, 3001, 3002)

§ 757.3 Who is eligible to apply?

A State educational agency (SEA), local educational agency (LEA), or other public or nonprofit private agency, organization, or institution may apply for a grant. An applicant may apply singly or jointly with another eligible applicant, as provided in §§ 75.127 through 75.129 of EDGAR.

(20 U.S.C. 3002(a))

§ 757.4 Definitions.

As used in these regulations—

"Act" means the Law-Related Education Act of 1978 that is enacted by Pub. L. 95-561 as Part G of Title III of the Elementary and Secondary Education Act of 1965.

(20 U.S.C. 1221e-3(a)(1), 3001)

Subpart B—What Kinds of Activities Does the Secretary Support Under this Program?

§ 757.10 What are the eligible projects; priorities?

(a) *Eligible projects.* The Secretary awards grants to support any law-related education activities authorized under the Act.

(b) *Annual priority areas.* The Secretary annually may reserve funds to support some, all, or a combination of the following types of projects: (1) Projects to support law-related education programs in elementary or secondary schools or both, as described in § 757.12. In this area, the Secretary may reserve funds for—

(i) Projects to plan and establish new law-related education programs;

(ii) Projects to strengthen or expand established law-related education programs;

(iii) Projects to provide technical assistance from established law-related education programs to other organizations in one or more States;

(2) Projects to carry out exemplary activities in any area authorized by the Act, as described in § 757.13.

(20 U.S.C. 3002)

§ 757.11 Non-duplication of procurements.

The Secretary does not fund a grant to support activities that duplicate any procurement activities under the Act.

(20 U.S.C. 3002)

§ 757.12 Elementary and secondary school projects.

(a) *Purposes.* The Secretary awards grants to support law-related education programs that serve elementary or secondary schools or both in a State, school district, or combination of school districts to—

(1) Plan and establish a new program; or

(2) Strengthen or expand an already established program—or provide technical assistance from the program to other organizations in one or more States—or both.

(b) *Activities.* To carry out these purposes the Secretary awards grants that support:

(1) The planning and implementation of awareness activities such as conferences or workshops for educators, law-related personnel, and the public;

(2) The planning and implementation of training activities—such as workshops, seminars, courses, or institutes—for educators and law-related personnel;

(3) The planning, development, and adaptation of curriculum and resource materials such as curriculum guides, resource publications, and lesson plans to the extent that they are incidental to training activities;

(4) Technical assistance to help individual participants (such as teachers) plan and implement the law-related education program in elementary or secondary schools and classrooms—or technical assistance to other agencies or organizations to help them identify and use available resources in initiating or conducting law-related education programs—or both; and

(5) Activities to mobilize and coordinate financial and programmatic support in the community for the grantee's program.

(20 U.S.C. 3002(d); S. Rep. No. 95-856, pages 41-42)

§ 757.13 Exemplary projects.

(a) *General.* The Secretary awards grants under this section to support innovative activities at any level of education and in any area of law-related education authorized under the Act. The project shall address needs that have not been adequately addressed by any law-related education program or take a particularly new and exemplary approach to law-related education.

(b) *Significance of project.* The project must be of national or regional significance by—

(1) Carrying out activities that are national or regional in scope;

(2) Developing a model program or product that can be used, copied, or adapted by other agencies and institutions in other places; or

(3) Addressing a particularly critical need in law-related education.

(20 U.S.C. 3002(d); S. Rep. No. 95-856, pages 41-42)

Subpart C—How Does One Apply for a Grant?

§ 757.20 What limitations apply to applications?

(a) An application from an LEA must comply with the requirements in §§ 75.138 through 75.141 of EDGAR concerning an open meeting on the application.

(b) An application from an LEA or SEA must document compliance with Section 302(b) of the Elementary and Secondary Education Act, as implemented by §§ 75.650 and 76.650-662 of EDGAR, concerning the opportunity for participation by private school children.

(c) An application for the second year of an approved two-year project must comply with § 75.118 of EDGAR and—

(1) Provide a budget for the second year;

(2) Detail any proposed project changes, as described in § 75.110 of EDGAR; and

(3) Provide a detailed project description for the second year—as required in § 75.110 of EDGAR—if this description was not fully provided in the original project application.

(20 U.S.C. 3002(c))

Subpart D—How Is a Grant Made?

§ 757.30 How does the Secretary evaluate an application?

(a) Within any established funding reservations, the Secretary decides whether or not to fund an application based on the following factors: (1) The criteria for evaluating applications in § 757.31 (Elementary and secondary school projects) or § 757.32 (Exemplary projects), as applicable.

(i) The maximum possible score for an application is 100 points. The maximum possible score for each criterion reflects the degree of importance assigned to that criterion by the Secretary and is indicated in parentheses.

(ii) In evaluating an application under the appropriate criteria from an applicant that previously received a grant under the Act, the Secretary places great emphasis on the success of the previously funded project in reaching its objectives.

(2) Whether funding the proposed project will contribute to the widest possible distribution of law-related education programs throughout the United States.

(b) The Secretary may decline to fund a project if it comes within a priority of another Federal agency.

(20 U.S.C. 3001, 3002)

§ 757.31 What criteria are used to evaluate applications for elementary and secondary school projects?

In evaluating applications to plan and initiate, to strengthen or expand, or to provide technical assistance to law-related education programs under § 757.12, the Secretary considers the following: (a) *Quality of the project.* (25 points) The quality of the applicant's law-related education project. In applying this criterion, the Secretary considers—

(1) Evidence of success of the applicant's materials, programs, or approaches in law-related education and in the types of activities proposed in the project;

(2) The applicant's and the staff's experience in and knowledge of law-related education, or provisions to obtain training and technical assistance from persons or groups experienced in law-related education;

(3) How the project addresses a diversity of learning approaches that are—

(i) Appropriate to the students to whom the project is directed;

(ii) Designed to address gains not only in students' knowledge, but also in their skills;

(iii) Balanced and based on sound scholarship and do not advocate particular legal or political viewpoints.

(4) The nature and scope of proposed training activities for participating individuals, including the extent of continuing training in a manner and place accessible to trainees.

(5) The likely quality of proposed technical assistance activities under § 757.12 (b)(4), including—

(i) In the case of technical assistance to other agencies and organizations, the applicant's plans for identifying the communities to receive technical assistance services and for involving representative educational, law-related, and other organizations in these communities as participants in the projects;

(ii) The applicant's capacity and plans to respond to the needs and interests of individuals and local communities to be assisted;

(iii) The nature and scope of the proposed technical assistance activities, including the extent of continuing, on-site technical assistance and the extent to which recipients of technical assistance will be exposed to a variety of law-related education models, materials, and approaches.

(b) *Plan of operation.* (12 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(vi) If the applicant is an SEA or LEA, how the applicant will provide an opportunity for the participation of children in private schools.

(c) *Likelihood of sustaining program.* (20 points) The likelihood that the project will help the applicant or organizations that receive technical assistance sustain a viable law-related education program. In applying this criterion, the Secretary considers the adequacy of the applicant's plan for institutionalizing law-related education or for assisting other organizations to institutionalize law-related education, including evidence of: (1) A plan for integrating law-related education as a regular part of the school curriculum;

(2) The participation of interested groups and individuals in planning and implementing the project;

(3) A realistic plan for developing financial support to continue the program after Federal funding expires, or, with respect to technical assistance to other agencies or organizations, for helping recipients develop this support for their programs.

(d) *Need for support.* (13 points) (1) With respect to an application to initiate or strengthen a law-related education program—

(i) The need and rationale for the applicant's program at the site and grade levels at which it is directed; and

(ii) The financial need of the applicant's program and the extent to which the project is likely—both directly and indirectly—to strengthen the program's financial capacity to sustain law-related education activities.

(2) With respect to an application from an established program that requests funding only to provide technical assistance to other agencies or organizations, the need and interest of communities to receive technical assistance from the project, as documented in the application.

(3) Applications designed both to strengthen an existing program and also to provide technical assistance to other agencies or organizations are evaluated under (d)(1) and (2) of this section.

(e) *Breadth of the proposed programs.* (5 points) The breadth of the law-related education programs likely to be developed as a result of the project. In applying this criterion, the Secretary considers—

(1) The numbers of students, teachers, and schools proposed to be served by the applicant's program and by programs given technical assistance; and

(2) The extent to which the project will increase the capacity of State or local organizations to offer law-related education at a variety of grade levels and educational settings.

(20 U.S.C. 3001, 3002)

(f) *Quality of key personnel.* (12 points) (1) The Secretary reviews each application for information that shows the quality of key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (f)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(g) *Budget and cost effectiveness.* (5 points) (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(h) *Evaluation plan.* (5 points) (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(i) *Adequacy of resources.* (3 points) (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 3001, 3002)

§ 757.32 What criteria are used to evaluate applications for exemplary projects?

In evaluating applications for exemplary grants, the Secretary considers—

(a) *Importance of need.* (18 points) The importance of the need addressed by the project, as documented by objective evidence in the application. In applying this criterion, the Secretary considers the extent to which the project—if successful—contributes to the Act's purposes to expand opportunities for law-related education throughout the United States and to improve the quality of law-related education programs.

(b) *Innovativeness.* (13 points) The extent to which the proposed project addresses needs that have not been adequately addressed by any law-related education program or the extent to which the proposed project uses a particularly new and exemplary approach to law-related education.

(c) *Quality of activities.* (16 points) The quality of the law-related education activities in the project. In applying this criterion, the Secretary considers how the project addresses the need for sound scholarship, quality control, and a balanced curriculum that does not advocate particular legal or political viewpoints.

(d) *Plan of operation.* (10 points) The Secretary evaluates an application on the basis of the criterion in § 757.31(b).

(e) *Evaluation plan.* (12 points) The Secretary evaluates an application on the basis of the criterion in § 757.31(h).

(f) *Quality of key personnel.* (13 points) The Secretary evaluates an application on the basis of the criterion in § 757.31(f).

(g) *Applicant's experience.* (10 points) The applicant's knowledge of and experience in law-related education, or specific provision for obtaining assistance from individuals or groups expert in the field.

(h) *Budget and cost effectiveness.* (5 points) The Secretary evaluates an application on the basis of the criterion in § 757.31(g).

(i) *Adequacy of resources.* (3 points) The Secretary evaluates an application on the basis of the criterion in § 757.31(i).

(20 U.S.C. 3001, 3002)

§ 757.33 What is the duration of support?

The Secretary approves a project for a period of up to two years. A multiyear application must comply with § 75.117 of EDGAR. Approval of a project for more than a year and the award of continuation grants within the project period are subject to the provisions in §§ 75.250 through 75.254 of EDGAR.

(20 U.S.C. 1221e-3)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 757.40 What are the limitations on allowable costs?

Allowable costs under a grant are direct and indirect costs incurred by the grantee in carrying out the approved project, subject to the applicable cost principles provided or referenced in §§ 75.530 through 75.534 of

EDGAR, except that construction and other capital costs are not allowable.

(20 U.S.C. 1221e-3)

PART 758—FINANCIAL ASSISTANCE FOR ENVIRONMENTAL EDUCATION PROJECTS

Subpart A—General

Sec.

758.1 What is the Environmental Education Program?
758.2 Who is eligible to receive grants?
758.3 What regulations apply to this program?
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758.40 Must a grantee help defray part of its project's costs?
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758.42 What other restrictions apply to the use of grants?
758.43 Must State and local educational agencies provide an opportunity for private school students to participate?

AUTHORITY: Part H of Title III of the Elementary and Secondary Education Act as amended by Pub. L. 95-561 (20 U.S.C. 3011-3018; 92 Stat. 2217-2221), unless otherwise noted.

SOURCE: 45 FR 22770, Apr. 3, 1980, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

EFFECTIVE DATE NOTE: At 46 FR 42848, Aug. 25, 1981, Part 758 was removed effective Oct. 1, 1982.

Subpart A—General

§ 758.1 What is the Environmental Education Program?

The Environmental Education Program assists educational projects that improve public understanding of environmental issues as they relate to the quality of life. Under this program, the Secretary may make direct grants to public or nonprofit private institutions, agencies, or organizations for developmental, demonstration, or mini-grant projects.

(20 U.S.C. 3011-3018)

§ 758.2 Who is eligible to receive grants?

The following are eligible to receive grants:

(a) Public and private institutions of higher education and other nonprofit private organizations. Each of these applicants shall have been in existence for one year or more prior to submitting an application.

(b) State Educational Agencies (SEAs), local educational agencies (LEAs), and other public agencies and organizations.

(c) Consortia of eligible applicants as defined in paragraphs (a) and (b) of this section.

(20 U.S.C. 3013(b)(1) and 3016)

§ 758.3 What regulations apply to this program?

(a) *Regulations.* The following regulations apply to the Environmental Education Program:

(1) The Department General Administration regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (Definitions); and

(2) The regulations in this part.

(b) The "Introduction to Department Programs" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Department programs; and

(2) Applying for assistance under a Department program.

§ 758.4 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in Part 77:

Applicant
Application
Secretary
EDGAR
Grant
Grantee
Local educational agency (LEA)
Nonprofit
Private
Project
Project period
Public
State
State educational agency (SEA)

(20 U.S.C. 1232)

(b) *The following terms apply specifically to this program:* "Act" means the Environmental Education Act of 1978.

"Consortium" means a group consisting of representatives of various areas of expertise in environmental education, such as State and regional planning, economics, social policy, environmental protection, public interest, business, higher education, secondary education, and community education.

"Environmental area of study" means the study of the relationship between various aspects of the natural and manmade environment and the total human environment. These aspects include the relationship between energy, population, resource allocation and depletion, conservation, transportation, technology, economic impact, urban and rural planning and the total human environment. The term also encompasses specific environmental issues.

"Resources" means materials, personnel, methods, or information.

"Target group" means the group to benefit from or to participate in a project.

(c) The term "environmental education" is defined in the Act.

(20 U.S.C. 3011-3018)

Subpart B—What Kinds of Projects Does the Department Assist under this Program?

§ 758.10 What are the purposes of the projects?

In order to be considered for a grant, an applicant shall propose a project that—

(a) Includes the study of the policy, social, cultural, and economic aspects of the environmental area of study or issues to be addressed; and

(b) Provides an objective and balanced treatment of different views on environmental issues and resolutions of those issues.

(20 U.S.C. 3011)

§ 758.11 What types of projects are supported?

The Secretary may award funds for three types of projects:

(a) Comprehensive multi-year projects.

(b) General projects.

(c) Mini-grant projects.

(20 U.S.C. 3013, 3016)

§ 758.12 What is a comprehensive multi-year project?

(a) (1) A comprehensive multi-year project is a developmental or demonstration project in environmental education that involves three or more activities and more than one target group.

(2) Specific target groups for a multi-year project may include educational administrators, teachers, students at the elementary, secondary, or post-secondary levels, community organizations, government employees, business and labor leaders, or the general public.

(b) A comprehensive multi-year project is intended to demonstrate effective methods for—

(1) Improving, over the long term, individual and institutional capabilities in environmental education;

(2) Adopting and adapting new knowledge as it becomes available;

(3) Identifying and using, in an appropriate and effective way, a broad range of local and regional resources;

(4) Achieving significant interaction between formal education and community education; and

(5) Facilitating local or regional adoption of the project's activities and the continuation of those activities after the project period ends.

(c) A comprehensive multi-year project requires more than 12 months to achieve its objective(s).

(20 U.S.C. 3013)

§ 758.13 What is a general project?

(a) A general project is a developmental project in environmental education that focuses on a single activity, such as any one of the activities listed in section 353(b)(2) of the Act.

(b) A general project requires no more than 12 months to achieve its objective(s).

(20 U.S.C. 3013)

§ 758.14 What is a mini-grant project?

(a) A mini-grant project is one or more community workshops, seminars, symposiums, or conferences on a community or local environmental issue.

(b) A mini-grant project is intended to assist the community—especially adults and members of community organizations other than the grantee organization—in understanding—

(1) The causes and effects of an environmental issue;

(2) Local policies and practices associated with the issue; and

(3) The options for resolving the issue.

(c) In addition to the primary activity, a mini-grant project may include a variety of preparatory and follow-up activities as needed to assure the project's success.

(d) A mini-grant project usually requires fewer than 12 months to achieve its objective(s).

(20 U.S.C. 3016)

§ 758.15 Are priorities for funding established?

(a) (1) In any given year—through publication of a notice in the Federal Register—the Secretary may give priority to one or more of the types of projects listed in § 758.11 and further described in §§ 758.12 through 758.14.

(2) Within comprehensive multi-year projects, the Secretary may in the notice give priority to projects that focus on one or more of the target groups specified in § 758.12(a)(2).

(3) Within general projects, the Secretary may in the notice give priority to one or more of the activities listed in section 353(b)(2) of the Act.

(b) In addition—

(1) In awarding grants for comprehensive multi-year projects, the Secretary may give priority to consortia of eligible applicants; and

(2) In awarding grants for mini-grant projects, the Secretary may give priority to nonprofit citizens' groups and volunteer organizations.

(20 U.S.C. 3013, 3016)

Subpart C—How Does One Apply for a Grant?

§ 758.20 What documents govern applications?

The Secretary considers making a grant to an eligible applicant only if the applicant prepares and submits an application according to—

(a) The regulations in this part;

(b) The applicable provisions in EDGAR;

(c) The procedures and priorities contained in the notices published in the Federal Register; and

(d) The instructions and forms included in the application package.

(20 U.S.C. 1232)

§ 758.21 To whom must an applicant submit its application for comment?

(a) All applicants must meet the requirements described in EDGAR 34 CFR 75.170 through 75.173 (OMB Circular A-95 Clearinghouse Procedures).

(b) In addition, an applicant LEA must—

(1) Meet the requirements for open meetings described in EDGAR 34 CFR 75.138 through 75.141; and

(2) Submit a copy of its application to its SEA for review and comment. Procedures are described in EDGAR 34 CFR 75.156 through 75.158.

(20 U.S.C. 3014(b))

Subpart D—How is a Grant Made?

§ 758.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 758.31 of this part.

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses at the end of that criterion.

§ 758.31 What selection criteria does the Secretary use?

(a) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(vi) For grants to be made after October 1, 1980, if the applicant is a local educational agency or State educational agency, a clear description of how the applicant will provide an opportunity for participation of students enrolled in nonprofit private schools. (10 points)

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally under-represented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides. (7 points)

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project. (5 points)

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See § 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable. (5 points)

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate, and

(ii) The equipment and supplies that the applicant plans to use are adequate. (3 points)

(20 U.S.C. 1221e(3)(a)(1))

(f) *Adequacy of content treatment.* The Secretary reviews each application to determine the extent to which the proposed project—

(1) Identifies and organizes into a meaningful relationship to one another the policy, social, economic, cultural, technological, bio-physical, and human health aspects of the environmental area of study or issue(s) to be addressed; (25 points)

(2) Reflects current knowledge of the environmental area of study or issue(s) to be addressed; (10 points)

(3) Is likely to communicate that knowledge in a manner that is appropriate to the project's objective(s) and target group(s). (10 points)

(g) *Project effectiveness.* The Secretary reviews each application to determine the extent to which the proposed project will enhance the ability of its target group(s) to participate in environmental decision-making by improving the ability of the group(s) to—

(1) Contribute to the identification of environmental issues and alternative resolutions of those issues;

(2) Assess short- and long-term risks, benefits, costs, and acceptability of alternative resolutions; and

(3) Understand the need for practicable resolutions embodying different points of view. (15 points)

(h) *Potential impact.* The Secretary reviews each application to determine the extent to which the proposed project gives evidence of—under one of the following categories—potential for improving the quality of environmental education:

(1) If the proposed project is a comprehensive multi-year project, the extent to which it has the potential for being a national demonstration project; or

(2) If the proposed project is a general project, the extent to which its results can be adapted for environmental education in other areas of the country; or

(3) If the proposed project is a mini-grant project, the extent to which it is likely to improve the ability of its target group(s) to understand local environmental issues in a broader context. (10 points)

(20 U.S.C. 1221e-3(a)(1); 3013; 3016)

Subpart E—What Conditions Must a Grantee Meet?

§ 758.40 Must a grantee help defray part of its project's cost?

(a) If the project is a national-level curriculum development, evaluation, dissemination, or demonstration project, the grant may cover 100 percent of the cost.

(b) If the project is a mini-grant project, the grant may cover 100 percent of the cost up to $10,000.

(c) (1) For other types of projects, Federal funding may not exceed 80 percent of the approved project cost for the first year.

(2) In the second and third years, Federal funding decreases to 60 percent and 40 percent respectively, of the approved project cost for the first year, regardless of the actual project cost in the second and third years.

(3) The non-federal contribution to the approved project cost may be in cash or in kind, including fairly evaluated plant, equipment, and services contributions.

(20 U.S.C. 3014(d) and 3016)

§ 758.41 Are there restrictions on the types of costs a grant may support?

(a) Federal funds may not be used for improvement or alteration of sites.

(b) Funds may not be used for subgrants.

(20 U.S.C. 3013, 3016)

§ 758.42 What other restrictions apply to the use of grants?

Grants may be used to supplement or increase funds made available by the applicant for these types of activities. Grants may not be used to supplant those funds.

(20 U.S.C. 3014(a)(4))

§ 758.43 Must State and local educational agencies provide an opportunity for private school students to participate?

If an SEA or LEA receives a grant under this program, the Act requires that agency to provide for participation by students enrolled in nonprofit private elementary and secondary schools. EDGAR establishes the rules for this participation (See EDGAR, 34 CFR 75.650).

(20 U.S.C. 2942(b))

PART 763—POPULATION EDUCATION PROGRAM

Subpart A—General

Sec.
763.1 Population education program.
763.2 Eligible parties.
763.3 Regulations that apply to the population education program.
763.4 Definitions that apply to the population education program.

Subpart B—What Kinds of Projects Does the Department Assist Under This Program?

763.10 Nature of projects.
763.11 Duration of projects.

Subpart C—How Does One Apply for a Grant?

763.20 Procedures for applying.

Subpart D—How Is a Grant Made?

763.30 How the Secretary reviews an application.
763.31 Selection criteria the Secretary uses.

Subpart E—What Conditions Must Be Met by a Grantee?

763.40 Allowable costs.
763.41 Cooperation with State and local educational agencies.
763.42 State and local educational agencies must provide an opportunity for nonprofit private school students to participate.

AUTHORITY: Part M of Title III of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978 (Pub. L. 95-561; 92 Stat. 2227 and 2228) (20 U.S.C. 3062), unless otherwise noted.

SOURCE: 45 FR 23204, Apr. 4, 1980, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

EFFECTIVE DATE NOTE: At 46 FR 42848, Aug. 25, 1981, Part 763 was removed effective Oct. 1, 1982.

Subpart A—General

§ 763.1 Population education program.

The purpose of the Population Education Program is, through Federal assistance, to implement a program of population education in elementary and secondary schools.

(Sec. 392(a) and (b); 20 U.S.C. 3062(a) and (b))

§ 763.2 Eligible parties.

The Secretary may make grants to institutions of higher education, State and local educational agencies, or other nonprofit organizations and institutions.

(Secs. 302(a) and 392(a); 20 U.S.C. 2942(a) and 3062(a))

§ 763.3 Regulations that apply to the population education program.

(a) *Regulations.* The following regulations apply to the Population Education Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (Definitions).

(2) The regulations in this Part 763.

(20 U.S.C. 1221e-3(a)(1))

§ 763.4 Definitions that apply to the population education program.

(a) Definitions in EDGAR. The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Secretary
Elementary school
Project
Secondary school

(b) *Definitions in the Elementary and Secondary Education Act.* The following terms used in this part are defined in Section 1001 of the Elementary and Secondary Education Act of 1965, as amended.

(20 U.S.C. 3381)

Local educational agency (LEA)

State
State educational agency (SEA)

(c) *Program definitions.* As used in this part:

"Appropriate State and local educational agencies" means State or local educational agencies representative of those State and local educational agencies affected, either directly or indirectly, by a project activity.

"Educational personnel" means—

(1) Teachers, teacher aides, counselors, and guidance personnel, and educational administrators and supervisors; and

(2) Other persons who teach students, train teachers, or perform professional services that are closely related to the teaching of students or to the training of teachers, educational administrators, supervisors, or planners.

"Population education" means the educational process by which an individual develops an awareness and understanding of—

(1) The nature of demographic trends, population characteristics, and population variables;

(2) The causes and consequences of population changes;

(3) The political, social, economic, environmental, and cultural implications of population phenomena;

(4) The direct and indirect impact of public and private policies on population phenomena;

(5) The variety of issues and events that are related to the study of population; and

(6) Methods by which individuals, families, communities, the Nation, and the world might effectively respond to and affect population processes.

(Sec. 392 (a) and (b); 20 U.S.C. 3062 (a) and (b); S. Rep. No. 856, 95th Cong. 2nd Session 44-45 (1978))

Subpart B—What Kinds of Projects Does the Department Assist Under This Program?

§ 763.10 Nature of projects.

A project assisted under this part must encourage the development or incorporation of population education in a variety of subject areas at the elementary or secondary school levels. These subject areas may include, but are not limited to, history, science, biology, social studies, and home economics.

(Sec. 392 (a) and (b); 20 U.S.C. 3062 (a) and (b))

§ 763.11 Duration of projects.

The Secretary makes grant awards for a specified period of time. Generally, this period does not exceed three years.

(Sec. 392 (a) and (b); 20 U.S.C. 3062 (a) and (b); 20 U.S.C. 1221e-3(a)(1))

Subpart C—How Does One Apply for a Grant?

§ 763.20 Procedures for applying.

In applying for a grant, each applicant shall follow the procedures and meet the requirements stated in Subpart C of 34 CFR Part 75 of EDGAR.

(20 U.S.C. 1232c(b)(3))

Subpart D—How Is a Grant Made?

§ 763.30 How the Secretary reviews an application.

(a) The Secretary reviews an application on the basis of the criteria in § 763.31.

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses at the end of that criterion.

§ 763.31 Selection criteria the Secretary uses.

(a) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program; and

(iv) The way the applicant plans to use its resources and personnel to achieve each objective.

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(vi) For grants to be made after October 1, 1980, if the applicant is a local educational agency or State educational agency, a clear description of how the applicant will provide an opportunity for participation of children enrolled in nonprofit private schools. (10 points)

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally under-represented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides. (10 points)

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project. (5 points)

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable. (5 points)

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate. (5 points)

(f) *Quality of dissemination plan.* the Secretary reviews each application for information that shows the quality of the applicant's plan to disseminate information related to the project. Dissemination activities should be related to the scope of a project. (5 points)

(g) *Likelihood of incorporation into continuing activities.* The Secretary reviews each application for information that shows the likelihood that the applicant will incorporate the results of the project into its continuing activities, or those of cooperating organizations, after Federal funding ends. (10 points)

(h) *Involvement of a variety of academic fields.* The Secretary reviews each applicaton for information that shows the degree to which the project involves a variety of appropriate academic fields in all phases of its development and operation. (10 points)

(i) *Potential for substantial qualitative contribution.* The Secretary reviews each application for information that demonstrates the overall potential of the project to make a substantial qualitative contribution toward improving population education at the elementary and secondary school levels. This includes the likelihood that the results of the project will be of potential use to a variety of groups throughout the Nation. (20 points)

(j) *Cooperation with appropriate SEAs and LEAs, and other organizations.* The Secretary reviews each application for information that shows the extent to which the project is developed and operated in cooperation with appropriate SEAs and LEAs, as well as with other public and private organizations. (5 points)

(k) *Focus of project.* The Secretary reviews each application for information that shows the extent to which the project focuses primarily on one or more of the following:

(1) The development, field testing, and dissemination of teacher and student educational, training, and instructional materials in population education.

(2) The identification, evaluation, improvement, and adaptation of existing population education curricula and educational materials.

(3) The development of in-service training programs for educational personnel who will implement population education activities at the elementary and secondary school levels. (15 points)

(Sec. 392 (a) and (b); 20 U.S.C. 3062 (a) and (b); 20 U.S.C. 1221e-3(a)(1))

Subpart E—What Conditions Must Be Met by a Grantee?

§ 763.40 Allowable costs.

(a) In accordance with Subpart E of 34 CFR Part 75 of EDGAR, a grantee may use funds awarded under this part to meet the costs of project activities, and of indirect costs of project activities. However, paragraph (b) of this section imposes an additional standard for certain costs.

(b) The following costs are allowable only in exceptional cases in which an applicant clearly demonstrates in its project application financial need and programmatic necessity—limited payments for stipends, released time, or employment of substitutes to enable educational personnel to participate in activities of the project.

(Sec. 392(a) and (b); 20 U.S.C. 3062(a) and (b); 20 U.S.C. 1221e-3(a)(1))

§ 763.41 Cooperation with State and local educational agencies.

If a project assisted under this part includes any of the following population education activities, the grantee shall carry out the activity in cooperation with appropriate SEAs and LEAs:

(a) Development and dissemination of teacher and student educational, training, and instructional materials, including the identification, evaluation, improvement, and adaptation of existing curricula and educational materials.

(b) Research support to develop curriculum content and to evaluate programs and materials for the purpose of widespread dissemination.

(Sec. 392(b); 20 U.S.C. 3062(b))

§ 763.42 State and local educational agencies must provide an opportunity for nonprofit private school students to participate.

If an SEA or LEA receives a grant under this program, the Act requires that agency to provide for participation by students enrolled in private nonprofit elementary and secondary schools. EDGAR establishes the rules for this participation (See EDGAR, 34 CFR 75.650).

(Sec. 302(b); 20 U.S.C. 2942(b))

PART 764—SECRETARY'S DISCRETIONARY PROGRAM

Subpart A—General

Sec.
764.1 What is the Secretary's Discretionary Program?
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AUTHORITY: Section 303 of the Elementary and Secondary Education Act, as amended (20 U.S.C. 2943).

SOURCE: 45 FR 79036, Nov. 28, 1980, unless otherwise noted.

Subpart A—General

§ 764.1 What is the Secretary's Discretionary Program?

(a) The Secretary's Discretionary Program assists in the development or demonstration, or both, of innovative methods, techniques, or practices which contribute to the solution of educational problems. The program includes small grants to teachers, administrators, other educational personnel and parent organizations.

(b) These regulations govern—

(1) Funds appropriated by Congress under section 303(d)(1) of the Act; and

(2) Up to ten percent of the funds appropriated under Part B (Metric Education), Part C (Arts in Education), Part F (Youth Employment), Part G (Law-Related Education), Part H (Environmental Education), Part I (Health Education), Part J (Correction Education), and Part L (Biomedical Sciences) of the Act.

(c) These regulations do not govern programs that are supported by funds under (b)(1) or (2) of this section for which there are separate regulations.

(20 U.S.C. 2943)

§ 764.2 Who is eligible to apply for assistance?

(a) For grants to carry out innovative projects, eligible applicants include—

(1) State educational agencies (SEAs);

(2) Local educational agencies (LEAs);

(3) Other public agencies; or

(4) Nonprofit private agencies, organizations or institutions.

(b) For small grants to assist in the development or demonstration of innovative methods or techniques, eligible applicants include—

(1) Teachers;

(2) Administrators or other educational personnel; and

(3) Parent organizations.

(20 U.S.C. 2942 and 2943)

§ 764.3 What regulations apply to this program?

(a) *Regulations for grants.* The following regulations apply to grants made under the Secretary's Discretionary Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (Definitions), except that § 75.201(a)(3) and § 75.217(a) do not apply and §§ 75.100 through 75.102 do not apply unless a closing date for certain applications is published in the FEDERAL REGISTER.

(2) The regulations in this part.

(b) *Regulations for procurement contracts.* The Secretary may, under certain conditions, issue contracts under the Secretary's Discretionary Program. These contracts are subject to—

(1) Procurement regulations in 41 CFR Chapters 1 and 34; and

(2) Requirements and criteria in particular requests for proposals (RFPs).

(20 U.S.C. 3474, 2943)

§ 764.4 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in these regulations are defined in part 77:

Applicant
Application

Award
Budget
Local educational agency (LEA)
Nonprofit
Private
Project
Public
Secretary
State educational agency (SEA)

(b) *Program specific definitions.*

"Act" means Title III of the Elementary and Secondary Education Act of 1965, as amended.

"Small Grant" means grants of $25,000 or less as authorized by section 303(b) of the Act.

(20 U.S.C. 3474, 2943)

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 764.10 What types of projects does this program support?

(a) The Secretary funds two categories of projects—

(1) Projects to develop or demonstrate, or both, innovative techniques, methods, or approaches which will contribute to the solution of educational problems.

(2) Small grant projects to develop or demonstrate, or both, innovative methods or techniques which will contribute to the solution of educational problems.

(b)(1) The Secretary may publish a program announcement in the FEDERAL REGISTER that describes the particular area of education in which awards will be made, as well as any closing date that will apply.

(2) If the Secretary does not publish a program announcement in the FEDERAL REGISTER, funds may be awarded to support a project in any area of education.

(c) Even if the Secretary publishes a program announcement in the FEDERAL REGISTER the Secretary may support a project in an area which is not described in the program announcement if the Secretary concludes that the application—

(1) Satisfies the requirements in these regulations,

(2) Is of outstanding quality, and

(3) Shows a strong likelihood of meeting important national needs.

(20 U.S.C. 3474, 2943)

Subpart C—How Does One Apply for a Grant?

§ 764.20 Application requirements.

(a) The Secretary considers making a grant to an eligible applicant if it—

(1) Submits an application, and

(2) Complies with all applicable rules in EDGAR governing the submission of applications.

(b) An application from an LEA must comply with the requirements in §§ 75.138 through 75.141 of EDGAR concerning an open meeting on the application.

(c) If an employee of an LEA applies for a small grant, the application must contain assurances that the LEA—

(1) Has had an opportunity to comment on the application; and

(2) Will cooperate with the employee in carrying out the project.

(20 U.S.C. 3474, 2943)

Subpart D—How Does the Secretary Make a Grant?

§ 764.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the unweighted criteria in § 764.31.

(b) On the basis of the evaluation criteria in § 764.31, the Secretary compares an application submitted in response to other applications submitted in response to the same program announcement.

(c) On the basis of the evaluation criteria in § 764.31, the Secretary compares an application not submitted in response to a program announcement to any other pending application for the same fiscal year that were also not submitted in response to a program announcement. The Secretary may also compare such applications to others received for a prior fiscal year.

(d) The Secretary may decline to fund an application that is eligible for funding under any other Department of Education program.

(20 U.S.C. 3474, 2943)

§ 764.31 What selection criteria does the Secretary use?

(a) *Plan of operation.*

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons;

(D) The elderly; and

(vi) If the applicant is an LEA or SEA, a clear description of how the applicant will provide an opportunity for participation of students in nonprofit private elementary and secondary schools.

(b) *Quality of key personnel.*

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (2) (i) and (ii) of this section plans to commit to the project;

(iv) The extent to which the applicant, as a part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons;

(D) The elderly; and

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.*

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.*

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See § 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.*

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Problems addressed.* If the application is not submitted in response to a program announcement, the Secretary looks for information that shows the extent to which educational problems of national significance are addressed by the project.

(g) *Innovativeness.* The Secretary looks for information that shows the extent to which the project involves techniques that are innovative but build on current knowledge and research.

(h) *Applicant's commitment and capacity.* The Secretary looks for information that shows the extent to which the applicant demonstrates the commitment, capacity, and expertise to successfully carry out the project's purposes.

(i) *Model or demonstration.* The Secretary looks for information that shows the project's potential as a model or demonstration that will contribute to the solution of educational problems.

(20 U.S.C. 3474, 2943)

Subpart E—What Conditions Must be Met by a Grantee?

§ 764.40 Participation of students enrolled in private non-profit schools.

Each SEA or LEA that receives a grant under this program, shall provide for participation by students enrolled in nonprofit private elementary and secondary schools. EDGAR establishes the rules for this participation (see EDGAR, § 75.650).

(20 U.S.C. 2942(b))

§ 764.41 Use of funds.

Direct and indirect costs incurred by a grantee in carrying out an approved project are subject to—

(a) The limitations and applicable cost principles provided or referred to in EDGAR; and

(b) The limitations that—

(1) A grantee may not use funds under this program for construction or remodeling costs; and

(2) Equipment costs may not exceed five percent of the grant amount.

(20 U.S.C. 3474, 2943)

PART 765—BASIC SKILLS IMPROVEMENT AND EDUCATIONAL PROFICIENCY

Subpart A—General

Sec.
765.1 Programs under this part.
765.2 Eligible applicants.
765.3 Regulations that apply to Basic Skills Improvement and Educational Proficiency.
765.4 Definitions.
765.5 Submission of applications.

Authority: Title II and Part B of Title IX, of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561, 92 Stat. 2201 (20 U.S.C. 2881-2922; 20 U.S.C. 3331 and 3332), unless otherwise noted.

Source: 45 FR 34211, May 21, 1980, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

Effective Date Note: At 46 FR 42848, Aug. 25, 1981, Part 765 was removed effective Oct. 1, 1982.

Subpart A—General

§ 765.1 Programs under this part.

Parts 765, 766, 767, and 768 contain regulations for a number of programs to improve achievement in and mastery of the basic skills of reading, mathematics, and oral and written communication:

(a) Part 765—General. Unless otherwise specified, these provisions apply to Parts 766, 767, and 768.

(b) Part 766, the National Basic Skills Improvement component, consists of three programs which are demonstration in nature. They are—

(1) The Basic Skills Improvement in the Schools Program (section 205), which assists projects to demonstrate improved delivery of basic skills instruction in the schools;

(2) The Parent-Participation Program (section 206), which assists activities that enlist parents and volunteers in teaching basic skills to children; and

(3) The Out-of-School Basic Skills Improvement Program (section 208), which assists projects to help children, youth, and adults improve their basic skills outside the normal school program.

(c) Part 767, the State Basic Skills Improvement component, consists of two programs. They are—

(1) The Formula Grant Program (sections 221 through 223), which provides support to help a State plan and implement basic skills improvement projects, primarily through subgrants by the State to subgrantees; and

(2) The State Leadership Program (sections 221 and 224), which provides support for a State to—

(i) Carry out leadership and training in the area of basic skills; and

(ii) Develop and implement statewide plans for improving the basic skills achievement of children, youth, and adults.

(d) Part 768, the Educational Proficiency component, consists of two programs. They are—

(1) The Proficiency Standards Program (section 921), which assists projects to help students reach levels of educational proficiency set by the applicant; and

(2) The Achievement Testing Program (section 922), which provides assistance to develop the capacity of State educational agencies (SEAs) and local educational agencies (LEAs) to conduct projects of testing the basic skills achievement of elementary and secondary school children.

(e) The Secretary enters into contracts to carry out the programs authorized by sections 204 (technical assistance), 207 (technology and instruction), 209 (evaluation and dissemination), 231 (inexpensive book distribution), and 232 (special mathematics instruction).

(20 U.S.C. 2881, 2885, 2886, 2887, 2888, 2901-2904, 3331, 3332)

§ 765.2 Eligible applicants.

(a) The following kinds of agencies are eligible to apply for grants for any of the three programs in the National Basic Skills Improvement component:

(1) An SEA.

(2) An LEA.

(3) A public or nonprofit private agency, organization, or institution, including an institution of higher education. Examples of private agencies that are eligible to apply under the Out-of-School Basic Skills Improvement Program include, but are not limited to: labor unions, volunteer organizations, and business associations. A for-profit agency, organization, or institution is not eligible to receive a grant but may receive a contract under any procurement that may be issued for these three programs.

(b) Any State is eligible to apply for either or both programs in the State Basic Skills Improvement component.

(c) The following kinds of agencies are eligible to apply for the Proficiency Standards Program:

(1) An SEA.

(2) An LEA, if the appropriate SEA does not intend to submit an application. The LEA is responsible for contacting the SEA to determine if there will be a State application.

(d) The following kinds of agencies are eligible to apply for the Achievement Testing Program:

(1) An SEA.

(2) An LEA.

(3) Any other public agency, organization, or institution, including a public institution of higher education. A nonprofit or for-profit private agency, organization, or institution is not eligible to receive a grant but may receive a contract under any procurement that may be issued for this program.

(20 U.S.C. 2884, 2902-4, 3331, 3332)

§ 765.3 Regulations that apply to Basic Skills Improvement and Educational Proficiency.

The following regulations apply to Basic Skills Improvement and Educational Proficiency:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 77 (Definitions); and

(1) For the programs in the National Basic Skills Improvement component and the Educational Proficiency component, 34 CFR Part 75 (Direct Grant Programs); or

(2) For the programs in the State Basic Skills Improvement component, 34 CFR Part 76 (State-Administered Programs).

(b) The regulations in these Parts: 765 and 766, 767, or 768, as appropriate.

§ 765.4 Definitions.

(a) *Definitions in EDGAR.* The following terms used in this Part are defined in 34 CFR Part 77:

Applicant, application, award, budget period, elementary school, facilities, grant, grantee, local educational agency, nonprofit, nonpublic, preschool, private, project, public, secondary school, State, State educational agency, subgrant, subgrantee.

(20 U.S.C. 1221e 3(a)(1))

(b) *Definitions specific to these regulations.* As used in these regulations—

"Secretary" means the Secretary of Education;

"Basic Skills" means reading, mathematics, and oral and written communication; and

"Section" or "Sec.", unless otherwise indicated, means a section of Title II or Part B of Title IX of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561.

(20 U.S.C. 2881-2922, 3331-3332)

§ 765.5 Submission of applications.

(a) (1) For the programs in the National Basic Skills Improvement component and the Educational Proficiency component, the Secretary establishes annually—in an application notice published in the FEDERAL REGISTER—a closing date for receiving applications.

(2) An applicant shall submit a separate application for each program under which it wants a grant.

(3) The Secretary reviews separately each application in competition with other applicants seeking assistance under that program.

(b) (1) For the programs in the State Basic Skills Improvement component, an applicant enters into an individualized agreement with the Secretary under the requirements described in—

(i) Section 767.10 of these regulations for the Formula Grant Program; or

(ii) Section 767.11 of these regulations for the State Leadership Program.

(2) The Secretary and the State may decide to enter into a consolidated agreement under the Formula Grant Program and the State Leadership Program if the State wishes to participate in both programs.

(20 U.S.C. 2885, 2886, 2888, 2902, 2904, 3331, 3332)

PART 766—NATIONAL BASIC SKILLS IMPROVEMENT PROGRAMS

Subpart A—General

Sec.
766.1 What general provisions apply?

Subpart B—What Kinds of Projects Does the Department of Education Assist Under These Programs?

766.10 Basic skills improvement in the schools program.
766.11 Parent participation program.
766.12 Out-of-School Basic Skills Improvement Program.
766.13 Out-of-School Basic Skills Improvement Program: Requirements for instructional projects.
766.14 Duration of awards.
766.15 Reservation of funds.

Subpart C—[Reserved]

Subpart D—How Is a Grant Made?

766.30 State review of applications affecting an LEA.
766.31 How does the Secretary evaluate an application?
766.32 What selection criteria does the Secretary use?

Subpart E—What Conditions Must Be Met by a Grantee?

766.40 Coordination requirement.
766.41 Participation of private school children.
766.42 Other requirements for LEAs and SEAs.

AUTHORITY: These regulations are issued under the authority of Title II and Part B of Title IX of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561, 92 Stat. 2201 (20 U.S.C. 2881-2922; 20 U.S.C. 3331 and 3332), unless otherwise noted.

SOURCE: 45 FR 34212, May 21, 1980, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

EFFECTIVE DATE NOTE: At 46 FR 42848, Aug. 25, 1981, Part 766 was removed effective Oct. 1, 1982.

Subpart A—General

§ 766.1 What general provisions apply?

Unless otherwise indicated the provisions of subpart A of 34 CFR Part 765 (§§ 765.1 through 765.5) apply to programs under this part (766): The National Basic Skills Improvement Component.

Subpart B—What kinds of projects does the Department of Education assist under these programs?

§ 766.10 Basic skills improvement in the schools program.

(a) In order to be considered for a grant under this program, an applicant must propose a project that includes the six project elements described in the "Instruction in Basic Skills" section of the Act (section 205). The six elements are—

(1) Assessing schoolwide needs to identify the instructional needs of children in basic skills;

(2) Establishing learning goals and objectives for each project school;

(3) Developing comprehensive projects to address the needs through the use of resources available under this part and other resources from local, State, and Federal programs;

(4) Demonstrating techniques for coordinating the efforts of local agencies, organizations, and institutions, to improve achievement in basic skills;

(5) Conducting preservice training projects for teaching personnel, including teacher aides and other ancillary educational personnel, and inservice training and development projects designed to enable those personnel to improve their ability to teach basic skills; and

(6) Actively involving teachers, teacher aides, administrators, and other educational personnel in order to improve their ability to use available resources to carry out the purposes of this part.

(b) An applicant shall propose to conduct its project in all grades of the project schools, elementary, secondary, or both.

(c) (1) An applicant shall assess in each project school the instructional needs in all four basic skills areas.

(2) Each project must address at least one of the four basic skills areas—reading, mathematics, oral communication, or written communication—in each project school.

(3) However, if the proposed instructional activities do not address all four basic skills areas in each project school, the applicant shall show evidence in the application that those basic skills areas not addressed by the project are being met by other than project resources.

(20 U.S.C. 2885)

§ 766.11 Parent participation program.

(a) In order to be considered for a grant under this program—described in section 206 as "Parental Participation in Basic Skills Instructions"—an applicant must propose a project directed to enlisting parents or volunteers, or both, in working with schools to improve the basic skills of children.

(b) Activities that enlist parents and volunteers in working with schools to improve the basic skills of children may include, but are not limited to—

(1) Developing and disseminating materials that, with appropriate training, parents and volunteers may use with children in the home; or

(2) Conducting voluntary training activities to encourage parents and volunteers to assist children in developing basic skills.

(20 U.S.C. 2886)

§ 766.12 Out-of-School Basic Skills Improvement Program.

(a) In order to be considered for a grant under this program—described in section 208 as "Involvement of Educational Agencies and Private Organizations"—an applicant must propose a project that helps children, youth, or adults or any of these to improve their basic skills outside a normal school program.

(b) Activities that carry out the purpose described in paragraph (a) of this section, include, but are not limited to, the following:

(1) Free distribution of books to children, or lending or selling books to persons for the purpose of improving reading skills.

(2) (i) Instructional projects and voluntary tutorial projects outside of the school for those in need of basic skills improvement.

(ii) These projects may be known as "academies."

(iii) An applicant that proposes this type of project is subject to the requirements of § 766.13.

(3) Efforts by community organizations to encourage individuals to improve their basic skills.

(20 U.S.C.2888)

§ 766.13 Out-of-school Basic Skills Improvement Program: requirements for instructional projects.

An applicant that proposes an instructional project or voluntary tutorial project outside a school must include the following in its project:

(a) Procedures for—

(1) Identifying and recruiting participants who are most in need of basic skills improvement; and

(2) Focusing on the individual's ability to function effectively in society.

(b) Provisions for instruction at convenient times and locations.

(c) Procedures for effective coordination with other organizations, such as employment and training agencies, private businesses, vocational and technical institutions, and local schools.

(20 U.S.C. 2888)

§ 766.14 Duration of awards.

(a) Under the conditions described in EDGAR, applicants under the programs in the National Basic Skills Improvement component may apply for multi-year projects.

(b) Through an application notice published in the FEDERAL REGISTER, the Secretary announces—

(1) The amount, if any, available for multi-year projects; and

(2) The percentage decrease, if any, in the amount of funding available to multi-year grantees entering, for example, the second, third, fourth, or fifth project year.

(20 U.S.C. 2885, 2886, 2888, 2921, 2922)

§ 766.15 Reservation of funds.

(a) The Secretary may reserve funds to support projects in all or some of the activities described under each program of the National Basic Skills Improvement component in §§ 766.10 through 766.13.

(b) In the application notice, the Secretary notifies prospective grant applicants of:

(1) The amount of funds reserved, if any, for each of the types of projects; and

(2) Any limitations on the size of an individual grant for a particular type of project.

(20 U.S.C. 2885, 2886, 2888, 2921, 2922)

Subpart C—[Reserved]

Subpart D—How Is a Grant Made?

§ 766.30 State review of applications affecting an LEA.

(a) An applicant under a program in this part (766) shall seek written comments from the State educational agency (SEA) in each State in which the proposed activities are to take place if—

(1) The applicant is a local educational agency (LEA); or

(2) Any other applicant (other than an SEA) proposes to conduct an activity that—

(i) Involves an instructional program operated by an LEA; or

(ii) Involves preservice or in-service training of LEA personnel.

(b) In seeking the SEA's comments, the applicant shall specifically ask the SEA to state whether it considers the proposed activities to be consistent with the State's basic skills plan.

(c) The SEA may comment on the consistency of the proposed activities with the State's basic skills plan only if it has informed potential applicants in a timely manner of the criteria by which it intends to judge consistency.

(d) The applicant shall submit a copy of its application to the SEA at least 15 days before the closing date for submitting applications to the Secretary. To ensure consideration of its comments, the SEA shall forward its comments to the Secretary within 30 days.

(e) The Secretary considers an application for funding if—

(1) The SEA has indicated that the application is consistent with the State's basic skills plan;

(2) The SEA was given the required opportunity to comment, but did not do so; or

(3) The Secretary determines that the proposed activities make a special contribution to the purposes of the Act.

(20 U.S.C. 2881, 2882(b), 2890))

§ 766.31 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application under the National Basic Skills Improvement component on the basis of the criteria in § 766.32.

(b) The Secretary awards up to 100 possible points for these criteria. The maximum possible score for each criterion is indicated in parentheses.

(c) In addition to the criteria in § 766.32, the Secretary may take into account the geographic distribution of awards among the States in deciding which projects to support.

§ 766.32 What selection criteria does the Secretary use?

(a) *Plan of operation.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(vi) For grants made after October 1, 1980, if the applicant is a local educational agency or State educational agency, a clear description of how the applicant will provide an opportunity for participation of students enrolled in private non-profit schools.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (7 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objec-

tive and produce data that are quantifiable.

(e) *Adequacy of resources.* (3 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Project objectives.* (10 points)

The extent to which the project objectives are clear and are based on—

(1) The needs of the target population;

(2) High quality research; and

(3) Experience regarding basic skills instruction.

(g) *Coordination.* (20 points)

The extent to which the project provides for effective coordination of Federal, State, and local basic skills resources and activities.

(h) *Involvement of those affected.* (10 points)

The extent to which affected schools, organizations, and individuals have been and will be involved in planning and implementing the proposed activities.

(i) *Incorporation of results.* (10 points)

The extent to which the project's results can be incorporated into—

(1) The regular instructional program of the schools;

(2) Regular basic skills improvement activities in non-school settings; or

(3) A statewide basic skills plan.

(j) *Validation and dissemination.* (10 points)

The quality of the plan to validate the results of the project and to disseminate those results to interested agencies and institutions and to the general public.

(20 U.S.C. 2885, 2886, and 2888)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 766.40 Coordination requirement.

A recipient under the programs in this part (766) shall coordinate its activities with other local, State, and Federally-supported activities in the project area that relate to basic skills improvement.

(20 U.S.C. 2881-2890)

§ 766.41 Participation of private school children.

An SEA or LEA applicant under any of the three programs shall include an assurance in its application that it will provide for the equitable participation of children attending private, nonprofit elementary and secondary schools. EDGAR establishes the rules for this participation (see EDGAR, §§ 76.650 through 76.662).

(20 U.S.C. 2882)

§ 766.42 Other requirements for LEAs and SEAs.

An SEA or LEA applicant shall include in its application an assurance that it will have effective procedures to—

(a) Evaluate the effectiveness of the project and report its findings to the Secretary; and

(b) Incorporate successful practices into the regular instructional program.

(20 U.S.C. 2882)

PART 767—STATE BASIC SKILLS IMPROVEMENT

Subpart A—General

Sec.
767.1 What general provisions apply?

Subpart B—How Does a State Apply for a Grant?

767.10 Formula Grant Program: Individualized agreement.
767.11 State Leadership Program: Individualized agreement.

Subpart C—How Is a Grant Made to a State?

767.20 Formula Grant Program: Apportionment of funds.
767.21 State Leadership Program: Apportionment of funds.

Subpart D—Subgrants Under the Formula Grant Program

767.30 Eligibility for a subgrant.

Sec.
767.31 What kinds of projects may a State assist under subgrants?
767.32 In-school projects.
767.33 Parent-involvement projects.

Subpart E—What Conditions Must Be Met by a Grantee and Subgrantee?

767.40 Participation of private school children.

AUTHORITY: Title II and Part B of Title IX of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561, 92 Stat. 2201 (20 U.S.C. 2881-2922; 20 U.S.C. 3331 and 3332), unless otherwise noted.

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Subpart A—General

§ 767.1 What general provisions apply?

Unless otherwise indicated the provisions of Subpart A of 34 CFR Part 765 (§§ 765.1 through 765.5) apply to programs under this part (767): The State Basic Skills Improvement Component.

Subpart B—How Does a State Apply for a Grant?

§ 767.10 Formula Grant Program: individualized agreement.

(a) An SEA wishing to participate in the Formula Grant Program shall develop with the Secretary an individualized agreement. The Secretary announces in the FEDERAL REGISTER a closing date for receipt of the agreement.

(b) This agreement must include a description of—

(1) Recent basic skills activities in the State;

(2) The proposed goals and activities of the State project;

(3) Evaluation plans; and

(4) Expected outcomes.

(c) The agreement must also—

(1) Designate the State educational agency (SEA) as the agency responsible for administration of the agreement;

(2) Provide for a process of active and continuing consultation with the SEA by persons broadly representative of the educational resources of the State and of the general public. The purpose of this consultation is to provide advice to the SEA on the planning, development, implementation and evaluation of a comprehensive State program for improving basic skills. The educational resources that must be represented include—

(i) Public and nonprofit private elementary and secondary school children;

(ii) Institutions of higher education;

(iii) Parents of elementary and secondary school children;

(iv) Areas of professional competence relating to basic skills instruction in reading and mathematics;

(v) Classroom teachers in the State; and

(vi) Local administrators including principals and superintendents.

(3) Describe—(i) The basic skills instructional projects in elementary and secondary schools for which subgrant funds are sought or are likely to be sought; and

(ii) Procedures for giving priority to basic skills projects that already are receiving Federal financial assistance and show reasonable promise of achieving success;

(4) Contain criteria for achieving an equitable distribution of subgrant funds that are to be made available to local educational agencies (LEAs). The criteria shall—

(i) Take into account the size of the population to be served beginning with preschool children, the relative needs of pupils in different population groups within the State, and the financial ability of the LEA serving those pupils; and

(ii) Ensure that the distribution will include subgrants to LEAs having high concentrations of children with low reading or mathematics proficiency;

(5) Provide for the coordination and evaluation of subgrant projects assisted under the State project;

(6) Provide for technical assistance and support services for LEAs participating in the State project;

(7) Provide for the dissemination to the educational community and the general public of information about the objectives of the State project and

results achieved in the course of its implementation;

(8) Provide for making a report to the Secretary or the Secretary's designee at least once every three years and whatever other reports—in the form and containing the information—the Secretary may require;

(9) Provide that not more than five percent of the amount allotted to the State under this program for any fiscal year may be retained by the SEA for purposes of administering the agreement;

(10) Provide that subgrant projects shall be of sufficient size, scope, and quality to give reasonable promise of substantial progress toward achieving the purposes of this program; and

(11) Provide that Federal funds expended under the program will supplement the level of State and local funds that would be available for the projects in the absence of Federal assistance and will not supplant those State and local funds.

(20 U.S.C. 2901-2903)

§ 767.11 State Leadership Program: Individualized agreement.

(a) An SEA wishing to participate in the State Leadership Program shall enter into an individualized agreement with the Secretary to carry out activities based on needs identified by the State. The Secretary announces in the FEDERAL REGISTER a closing date for receipt of the agreement. The activities of grantees are limited to—

(1) The development of a comprehensive statewide program providing for the coordination of all Federal and State projects that offer instruction in basic skills;

(2) The planning of activities that involve local administrators, teachers, and parents in the development of strategies to improve instruction in basic skills;

(3) Statewide assessments of needs related to basic skills, including the needs of both students and instructional personnel;

(4) In-service training projects for local administrators, instructional personnel, and other staff members involved in instruction in basic skills; and

(5) The provision of technical assistance and the dissemination of information related to basic skills instruction to LEAs and other organizations and institutions involved in projects of instruction in basic skills.

(b) The agreement must include a description of—

(1) The proposed goals and activities of the State leadership project;

(2) How the applicant will implement the proposed activities;

(3) The applicant's evaluation plans;

(4) The expected outcomes of the State leadership project; and

(5) The proposed budget.

(20 U.S.C. 2904)

Subpart C—How Is a Grant Made to a State?

§ 767.20 Formula Grant Program: Apportionment of funds.

(a) Each year the Secretary apportions available funds among the States that have entered into an agreement under § 767.10 according to the formula described in section 223 of the Act ("Distribution of Funds"). If any States are not funded, the Secretary apportions the excess funds among those States that have entered into an agreement with the Secretary according to their number of school-age (5 through 17 years) children.

(b) The State shall subgrant at least 95 percent of the grant.

(c) The State shall subgrant to LEAs at least 70 percent of the grant.

(20 U.S.C. 2902, 2903)

§ 767.21 State Leadership Program: Apportionment of funds.

The Secretary apportions available funds among the States on the same basis as that described in § 767.20(a).

(20 U.S.C. 2904)

Subpart D—Subgrants Under the Formula Grant Program

§ 767.30 Eligibility for a subgrant.

The following kinds of agencies are eligible to apply to the State for a subgrant:

(a) For in-school projects, only an LEA.

(b) For parent involvement projects—

(1) An LEA;

(2) An institution of higher education; and

(3) Any other public or nonprofit private agency or institution.

(20 U.S.C. 2902(b))

§ 767.31 What kinds of projects may a State assist under subgrants?

In order to be considered for a subgrant, an applicant must propose—

(a) An in-school project serving preschool, elementary, or secondary school children (or any of these); or

(b) A parent-involvement project.

(20 U.S.C. 2902 (d) and (e))

§ 767.32 In-school projects.

(a) In developing its application for an in-school project subgrant, an LEA shall consult with teachers and building administrators in its district.

(b) (1) In order to be considered for a subgrant, the LEA shall propose a systematic strategy for improving basic skills instruction in its district.

(2) This systematic strategy must provide for the planning and implementation of comprehensive basic skills instructional projects throughout participating schools.

(c) Each school-level project must, as a part of its schoolwide improvement effort—

(1) Address the needs of all students;

(2) Use and coordinate available resources from all Federal, State, and local sources; and

(3) Provide for—

(i) Diagnostic assessment to identify the needs of all children in the school;

(ii) Establishment of learning goals and objectives for the school;

(iii) Preservice and in-service training, to the extent practicable, to enable teaching and administrative personnel—including teacher aides and other ancillary educational personnel—to improve their ability to teach students the basic skills;

(iv) Activities to enlist the support of parents to aid in the instruction of their children at home and school;

(v) Procedures for evaluating the effectiveness of the project. These shall include periodic testing of basic skills achievement and the publication of test results of basic skills performance, by grade level and by school, without identification of individual children; and

(vi) Assessment, evaluation and collection of information on individual children by teachers during each year those children are involved in a preschool project. This information must be made available to teachers in the subsequent year, as well as to the parents or guardians of each child.

(d) The LEA shall involve teachers, administrators, and parents in the development of school-level projects.

(20 U.S.C. 2902(d))

§ 767.33 Parent-involvement projects.

(a) In order to be considered for a subgrant for a parent-involvement project, an LEA or other eligible applicant shall propose a project directed to enlisting parents in working with schools to improve the basic skills of children.

(b) Activities that enlist parents in working with schools to improve the basic skills of children may include, but are not limited to—

(1) Development and dissemination of materials that parents may use in the home to improve their children's performance in basic skills;

(2) Encouragement of closer contacts between parents and teachers to improve coordination between learning experiences in the home and those in the school;

(3) Planning, developing, and improving centers—accessible to parents—to provide training materials and professional guidance, including volunteers, for parents who desire to assist in the instruction of their children; and

(4) Demonstration training projects for parents who desire to develop new skills to complement the instruction their children receive in school.

(20 U.S.C. 2902 (b) and (e))

Subpart E—What Conditions Must Be Met by a Grantee and Subgrantee?

§ 767.40 Participation of private school children.

A State shall ensure that its subgrantees provide for the equitable participation of children attending private elementary and secondary schools. EDGAR establishes the rules for this participation (see EDGAR, §§ 75.650 through 75.662).

(20 U.S.C. 2902(c))

PART 768—EDUCATIONAL PROFICIENCY

Subpart A—General

Sec.
768.1 What general provisions apply?

Subpart B—What Kinds of Projects Does the Department of Education Assist Under These Programs?

768.10 Proficiency Standards Program.
768.11 Achievement Testing Program.

Subpart C—[Reserved]

Subpart D—How Is a Grant Made?

768.30 State review of applications affecting an LEA.
768.31 How does the Secretary evaluate an application under the Proficiency Standards Program?
768.32 What selection criteria does the Secretary use for the Proficiency Standards Program?
768.33 What selection criteria does the Secretary use for the Achievement Testing Program?

AUTHORITY: Title II and Part B of Title IX of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561, 92 Stat. 2201 (20 U.S.C. 2881-2922; 20 U.S.C. 3331 and 3332), unless otherwise noted.

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Subpart A—General

§ 768.1 What general provisions apply?

Unless otherwise indicated the provisions of Subpart A of 34 CFR Part 765 (§§ 765.1 through 765.5) apply to programs under this part (768): Educational Proficiency.

Subpart B—What Kinds of Projects Does the Department of Education Assist Under These Programs?

§ 768.10 Proficiency Standards Program.

(a) In order to be considered for a grant under the Proficiency Standards Program, an applicant must propose a project to help students reach levels of educational proficiency set by the applicant.

(b) In its application, the applicant shall—

(1) Describe the proficiency standards being established in reading, writing, mathematics, and in any other proposed subjects;

(2) Describe instructional projects designed to assist students in reaching the proficiency standards; and

(3) Assure that supplementary instruction in the tested subject matter is provided to students who fail any examination described in the educational proficiency plan.

(20 U.S.C. 3331)

§ 768.11 Achievement Testing Program.

(a) In order to be considered for a grant under the Achievement Testing Program, an applicant must propose a project to develop the capacity of one or more State or local educational agency to test and assess the basic skills achievement of elementary and secondary students.

(b) Activities that meet the purpose described in paragraph (a) of this section include, but are not limited to, the following:

(1) Providing information to SEAs and LEAs about the availability of different tests of achievement and the uses of those tests.

(2) Providing training for administrators, teachers, and other instructional personnel in SEAs and LEAs on the uses of tests and test results.

(3) Conducting research and evaluation to determine improved means of assessing more accurately the achievement of children in basic skills and of diagnosing instructional needs.

(20 U.S.C. 3332)

Subpart C—[Reserved]

Subpart D—How Is a Grant Made?

§ 768.30 State review of applications affecting an LEA.

(a) An applicant under a program in this part (768) shall seek written comments from the State educational agency (SEA) in each State in which the proposed activities are to take place if—

(1) The applicant is a local educational agency (LEA); or

(2) Any other applicant (other than an SEA) proposes to conduct an activity that—

(i) Involves an instructional project operated by an LEA; or

(ii) Involves pre-service or in-service training of LEA personnel.

(b) In seeking the SEA's comments, the applicant shall specifically ask the SEA to state whether it considers the proposed activities to be consistent with the State's basic skills plan.

(c) The SEA may comment on the consistency of the proposed activities with the State's basic skills plan only if it has informed potential applicants in a timely manner of the criteria by which it intends to judge consistency.

(d) The applicant shall submit a copy of its application to the SEA at least 15 days before the closing date for submitting applications to the Secretary.

(e) The Secretary may refuse to consider an application for funding if the SEA has indicated that the application is inconsistent with the State's basic skills plan.

(20 U.S.C. 3331-3332)

§ 768.31 How does the Secretary evaluate an application under the Proficiency Standards Program?

(a) The Secretary evaluates an application under the Proficiency Standards Program on the basis of the criteria in § 768.32.

(b) The Secretary evaluates an application under the Achievement Testing Program on the basis of the criteria in § 768.33.

(c) The Secretary awards up to 100 possible points for these criteria.

(d) The maximum possible score for each complete criterion is indicated in parentheses.

(e) In addition to the criteria in § 768.32 and § 768.33 the Secretary may take into account the geographic distribution of awards among the States in deciding which projects to support.

§ 768.32 What selection criteria does the Secretary use for the Proficiency Standards Program?

(a) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (7 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally under-represented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (3 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Quality of objectives.* (20 points) The quality of the project objectives, including the extent to which the objectives are based on needs of the target population and on high quality research and experience regarding the setting of proficiency standards.

(g) *Procedures for involvement.* (10 points) The extent to which the applicant proposes effective procedures for involving teachers, parents, and experts in developing and adopting the proficiency standards.

(h) *Use of test results.* (15 points) The extent to which the applicant proposes effective procedures to convert proficiency test results into usable information for improving curriculum and instruction.

(20 U.S.C. 3331)

§ 768.33 What selection criteria does the Secretary use for the Achievement Testing Program?

(a) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (7 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaulation plan.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (3 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Quality of objectives.* (15 points)

The quality of the project objectives, including the extent to which the objectives are based on the needs of the applicant and on high quality research and experience regarding achievement testing.

(g) *Procedures for involvement.* (10 points)

The extent to which the applicant proposes effective procedures for involving teachers, parents, and experts in developing and implementing the project.

(h) *Use of test results.* (10 points)

The extent to which the applicant proposes effective procedures to convert achievement test results into usable information for improving curriculum and instruction.

(i) *Procedures for improvement.* (10 points)

The extent to which the applicant proposes effective procedures for improving the uses of tests and for finding other means of more accurately assessing achievement.

(20 U.S.C. 3331, 3332)

PART 769—ETHNIC HERITAGE STUDIES PROGRAM

Subpart A—General

Sec.

769.1 Ethnic heritage studies program.
769.2 Eligible parties.
769.3 Regulations that apply to the Ethnic Heritage Studies Program.

Subpart B—What Kinds of Projects Does the Department Assist Under This Program?

769.11 Project activities.
769.12 Types of awards.

Subpart C—How Does One Apply for a Grant?

769.21 How to use regulations.

Sec.
769.22 How to apply for funds.
769.23 Advisory council requirements.

Subpart D—How Does the Secretary Make a Grant?

769.31 Award decisions.
769.32 Selection criteria.

Subpart E—What Conditions Must Be Met by a Grantee?

769.41 Costs.

AUTHORITY: Title IX, Part E, of the Elementary and Secondary Education Act of 1965 (ESEA) as added by sec. 504 of Pub. L. 92-318, amended by section 111 of Pub. L. 93-380, and reauthorized and redesignated by section 802 of Pub. L. 95-561, 92 Stat. 2303-2304 (20 U.S.C. 3361-3367), unless otherwise noted.

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Subpart A—General

§ 769.1 Ethnic heritage studies program.

The Ethnic Heritage Studies Program provides Federal assistance for educational projects designed to give students opportunities to learn about their cultural heritage, as well as that of others.

(20 U.S.C. 3361)

§ 769.2 Eligible parties.

Parties eligible to receive assistance under this part are—

(a) Public educational agencies, institutions, and organizations, including local educational agencies (LEAs) and State educational agencies (SEAs); and

(b) Nonprofit private agencies, organizations, and institutions with an educational purpose.

(20 U.S.C. 3362)

§ 769.3 Regulations that apply to the Ethnic Heritage Studies Program.

The following regulations apply to the Ethnic Heritage Studies Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (Definitions).

(b) These regulations.

(20 U.S.C. 3361-3365)

Subpart B—What Kinds of Projects Does the Department Assist Under This Program?

§ 769.11 Project activities.

A project funded under this part shall carry out one or more of the following activities in paragraphs (a) through (c) of this section and the activity in paragraph (d) of this section:

(a) (1) Developing curricular materials related to—

(i) The history, geography, society, economy, literature, art, music, drama, language, or general culture of the ethnic group(s) designated in the project application; and

(ii) The contributions of the group(s) to the American heritage.

(2) Conducting research directed toward the production of these materials.

(b) Disseminating ethnic heritage studies curricular materials.

(c) Training persons in the use of ethnic heritage studies curricular materials developed under this part.

(d) Assisting people or organizations or both with an interest in the ethnic group(s) designated in the application to promote, encourage, develop, or produce programs or activities related to the history, culture, and traditions of that ethnic group(s).

(20 U.S.C. 3363)

§ 769.12 Types of awards.

The Secretary may award contracts or grants or both to carry out the activities described in § 769.11. In awarding contracts, the Secretary uses the procedures set out in 41 CFR Chapters 1 and 34.

(20 U.S.C. 3361-3365)

Subpart C—How Does One Apply for a Grant?

§ 769.21 How to use regulations.

The "Introduction to Regulations of the Department" at the beginning of

EDGAR includes general information to assist in using regulations that apply to Department programs.

(20 U.S.C. 3361-3365)

§ 769.22 How to apply for funds.

In applying for a grant, an application shall follow the procedures and meet the requirements stated in EDGAR.

(20 U.S.C. 3361-3365)

§ 769.23 Advisory council requirements.

(a) An applicant shall establish and consult with an advisory council in planning and carrying out the project proposed in its application.

(b) An applicant shall appoint members of the council in consultation with the ethnic and community group(s) with which the proposed project is concerned.

(c) More than one-half of the membership of the council shall consist of representatives of the ethnic group(s) with which the project is concerned.

(d) The provisions of EDGAR on conflict of interest (34 CFR 75.524 and 75.525) apply to the members of the council.

(20 U.S.C. 3364(a)(3))

Subpart D—How Does the Secretary Make a Grant?

§ 769.31 Award decisions.

(a) The Secretary evaluates applications on the basis of the criteria in § 769.32. The Secretary awards up to 100 points for these criteria.

(b) The Secretary selects projects on the basis of the following:

(1) The projects' quality based on the selection criteria.

(2) The need for geographic distribution of projects throughout the Nation.

(3) The need for projects that collectively focus on a diversity of ethnic groups.

(20 U.S.C. 3361-3365)

§ 769.32 Selection criteria.

(a) *Plan of operation* (15 points).

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program; and

(iv) The way the applicant plans to use its resources and personnel to achieve each objective.

(b) *Quality of key personnel* (10 points).

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers evidence of past experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness* (10 points).

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan* (5 points).

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources* (5 points).

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need* (15 points). The extent to which the applicant proposes to serve regions, activities, or ethnic groups previously neglected, and to serve a geographic area in which—

(1) Students need to learn more about their own heritage and that of others for a greater sense of personal identity;

(2) The contributions of ethnic groups to American society require recognition;

(3) The proposed ethnic heritage studies project is likely to reduce divisiveness and promote social cohesion; and

(4) There is a need to encourage the schools to enhance awareness and appreciation of cultural differences.

(g) *Objectives* (15 points). The extent to which the applicant demonstrates that—

(1) The proposed project will address the identified needs;

(2) Planned activities are specified and outcomes are measurable;

(3) The proposed project has the potential for use by other entities including other ethnic groups, either directly or as a model.

(h) *Project advisory council* (15 points). The extent to which—

(1) The project design demonstrates active involvement of the advisory council in the administration and evaluation of the program.

(2) The council members—(i) Have expertise in curriculum development, personnel training, or dissemination of curriculum materials, as appropriate;

(ii) Have expertise related to the ethnic group(s) with which the proposed project is concerned; and

(iii) Include parents and students, if appropriate.

(i) *Replicability* (10 points). The extent to which the applicant proposes to—

(1) Produce and distribute teaching materials or training models that are broadly applicable elsewhere (for applicants proposing to develop curricular materials or to train people in the use of those materials);

(2) Exchange information and materials with other projects; and

(3) Make arrangements for the deposit of reports and products of the program with appropriate clearinghouses, including the Education Research Information Center.

(20 U.S.C. 3361-3365)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 769.41 Costs.

(a) Subject to the limitations and applicable cost principles stated or referred to in EDGAR (34 CFR 75.530-75.568) the Secretary makes available funds to cover all or part of the cost of establishing and implementing an ethnic heritage studies project. This includes the cost of research materials and resources, consultants, and training of staff.

(b) A grantee may pay stipends to individuals receiving training under this program at the rate of up to $30 for each full day of participation but may not exceed $150 a week. For partial days involving fewer than five hours of participation, payments may be at the rate of up to $6 per hour, subject to the weekly limit of $150.

(c) A grantee may not use Federal funds received under this program for the purchase of equipment.

(20 U.S.C. 3361-3365)

PART 770—LIBRARY SERVICES, PUBLIC LIBRARY CONSTRUCTION, AND INTERLIBRARY COOPERATION

Subpart A—Types of Assistance

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AUTHORITY: Sec. 2, Pub. L. 91-600, as amended, 84 Stat. 1650 (20 U.S.C. 351), unless otherwise noted.

SOURCE: 44 FR 23846, Apr. 23, 1979, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—Types of Assistance

§ 770.1 Purpose and scope.

The purpose of these regulations is to implement the Library Services and Construction Act. This Act provides for Federal grants to assist States to—

(a) Establish, extend, and improve public library services in areas that are without these services or in which these services are inadequate;

(b) Construct public libraries;

(c) Establish, extend, and improve public library services including those for physically handicapped, institutionalized, disadvantaged persons, and persons with limited English-speaking ability;

(d) Strengthen State library administrative agencies;

(e) Promote interlibrary cooperation;

(f) Strengthen major urban resource libraries.

(20 U.S.C. 351)

§ 770.2 Regulations that apply to the Library Services and Construction Program.

(a) *Regulations.* The following regulations apply to the Library Services and Construction Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-Administered Programs) and Part 77 (Definitions).

(2) The regulations in this Part 770.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Department" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Department programs; and

(2) Applying for assistance under a Department program.

(20 U.S.C. 1221e-3(a)(1))

[45 FR 22533, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 770.3 Definitions.

(a) As used in this part, the following terms have the meaning given them in section 3 (Definitions) of the Library Services and Construction Act as amended:

Annual program
Basic State plan
Construction
Equipment
Library service
Library services for the physically handicapped
Long-range program
Public library
State advisory council on libraries
State institutional library services
State library administrative agency or State agency

(20 U.S.C. 351a)

(b) In addition to the definitions in paragraph (a)—"Act" means the Library Services and Construction Act, as amended.

(Pub. L. 91-600, as amended 20 U.S.C. 351)

"Disadvantaged persons" means persons who have educational, socio-economic, cultural, or similar disadvantages that prevent them from receiving the benefits of library services designed for persons without these disadvantages. The term includes persons whose need for special services results from poverty, neglect, delinquency, or cultural or linguistic isolation from the community at large. The term does not include physically or other handicapped persons, unless these persons also suffer from the disadvantages described in this paragraph.

(20 U.S.C. 351)

"Interlibrary cooperation," under title III (Interlibrary Cooperation) of the Act, means the establishment, expansion and operation of local, regional, and interstate cooperative library networks. The purpose of a network is to provide for the systematic and effective coordination of the resources of school, public, academic and special libraries and information centers for improved supplementary services for the special clientele served by each type of library or center. A network may serve a community, metropolitan area, or region within a State, or a Statewide or multi-State area. It consists of two or more types of libraries.

(20 U.S.C. 355e-1)

"Library materials" means books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microforms, pictorial or graphic works, musical scores, maps, charts, globes, sound recordings, slides, films, filmstrips, and processed video and magnetic tapes; printed, published, audiovisual materials, and non-conventional library materials designed specifically for the handicapped; and materials of a similar nature.

(20 U.S.C. 351)

"Major urban resource library" means a public library that—

(1) Is located in a city having a population of 100,000 or more;

(2) Because of the value of its collections, needs special assistance to furnish services at a level required to meet the demands made by individual users and other libraries; and

(3) Provides services to these users throughout the region in which this library is located.

(20 U.S.C. 351a(14), 353(a)(3))

"Public library services" means library services provided free of charge by or on behalf of a public library. The term does not include those library services that are properly the responsibility of schools.

(20 U.S.C. 351a(6))

[44 FR 23846, Apr. 23, 1979, as amended at 45 FR 22533, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 770.4 State advisory council on libraries.

(a) *General.* A State that desires to receive funds under the Act for any fiscal year shall establish a State advisory council on libraries. The State shall submit for each fiscal year a certification that it has established the council. The certification shall include the names of the council members and for each member a statement of identification that shows the representation required by paragraph (b) of this section.

(b) *Membership.* The membership of the State advisory council on libraries shall include persons broadly representative of each of the following:

(1) Public libraries.

(2) School libraries.

(3) Academic libraries.

(4) Special libraries, such as law or medical libraries.

(5) Institutional libraries, such as reformatory or hospital libraries.

(6) Libraries serving the handicapped in the State, and

(7) Users of these libraries. These users shall comprise at least one-third of the council membership, and at least one member shall be representative of disadvantaged persons.

(c) *Functions and responsibilities.* The State advisory council on libraries shall—

(1) Advise the State library administrative agency on the development of the State plan, including the preparation of long-range and annual programs under §§ 770.19 (*Long-range program*) and 770.20 (*Annual program*);

(2) Advise the agency on policy matters arising in the administration of the State plan; and

(3) Assist the agency in evaluating library programs, services, and activities under the State plan.

(20 U.S.C. 351a(8), 351d)

Subpart B—State Plan Provisions

§ 770.15 State plan—General.

(a) *Purpose.* The purpose of the State plan is to provide—

(1) A framework within which the State will encourage the establishment or expansion of programs to carry out the purpose stated in § 770.1 (*Purpose and scope*); and

(2) The basis for Federal payments to the State under this part.

(b) *Format.* The State plan consists of three parts:

(1) The basic State plan provided for in § 770.16 (*Basic State plan*).

(2) The long-range program provided for in § 770.19 (*Long-range program*).

(3) The annual program provided for in § 770.20 (*Annual program*).

(20 U.S.C. 351d(a))

(c) *Submissions.* To receive its allotment for any fiscal year a State shall—

(1) Have in effect a basic State plan amended in accordance with § 770.22 (*Amendments*) and approved by the Secretary in accordance with § 770.16 (*Basic State plan*).

(2) Submit or update a long-range program in accordance with § 770.22 (*Amendments*).

(3) Submit an annual program for which each allotment is desired.

§ 770.16 Basic State plan.

(a) The basic State plan shall consist of the following:

(1) A State-Federal agreement consisting of assurances (including those in § 770.40 (*Conditions for payments to States*)) and certifications submitted in a form prescribed by the Secretary.

(2) A statement of criteria—developed under § 770.17 (*Criteria for determining adequacy of public library services*)—for use by the State library administrative agency in determining the adequacy of public library services. This statement shall include criteria designed to assure that priority will be given to programs or projects that serve urban and rural areas with high concentrations of low-income families, as determined under § 770.18 (*Urban and rural areas with high concentration of low-income families*), and to programs or projects that serve areas with high concentrations of persons with limited English-speaking ability (as defined in Section 703(a) of Title VII of the Elementary and Secondary Education Act of 1965, as amended).

(3) For purposes of strengthening major urban resource libraries in accordance with section 102(c) (Uses of Federal Funds) of the Act, a statement defining the regional areas served by these libraries and stating the criteria that the State will use to determine whether the collections of these libraries are of value to individual users and other libraries of the regional areas in which these major urban resources libraries are located.

(b) (1) The Secretary approves the basic State plan or its amendment for each fiscal year if the Secretary determines that—

(i) The plan fulfills the conditions of a basic State plan specified in paragraph (a) of this section;

(ii) The information in the long-range and annual programs indicates that the State has adequate procedures to insure that the assurances and provisions of the basic plan will be carried out; and

(iii) All three parts of the State plan will be made public.

(20 U.S.C. 351a(11), 351d (b) and (c))

[44 FR 23846, Apr. 23, 1979, as amended at 45 FR 22533, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 770.17 Criteria for determining adequacy of public library services.

In developing criteria for determining the adequacy of public library services to geographic areas and groups of persons, the State library administrative agency shall give special consideration to the library needs of the following:

(a) Disadvantaged persons residing in urban or rural areas with high concentrations of low-income families.

(b) Persons residing in areas of the State that are without public library services or in which these services are inadequate.

(c) Physically handicapped persons, including the blind and other visually handicapped.

(d) Inmates, patients, or residents of penal institutions, reformatories, residential training schools, orphanages, residential schools for handicapped persons, and other general or special institutions or hospitals operated or substantially supported by the State.

(e) Persons of limited English-speaking ability.

(f) Persons and libraries in densely populated areas—of 100,000 or more persons—for services from major urban resource libraries.

(20 U.S.C. 351a(14) and d(b), 353(a)(e))

§ 770.18 Urban and rural areas with high concentration of low-income families.

(a) In developing criteria to assure that priorty will be given to programs or projects serving urban and rural areas with high concentrations of low-income families, the State library administrative agency shall, on the basis of the most recent information available to it, determine these areas.

(b) The criteria developed as part of the Basic State plan and incorporated by reference in the State-Federal agreement shall indicate—

(1) The areas of the State designated as urban and rural areas with high concentrations of low-income families;

(2) The criteria that the State agency used in designating these areas; and

(3) The sources of information on which the State based these criteria and the frequency with which the State updated this information.

(20 U.S.C. 351(d))

§ 770.18a Areas with high concentration of persons of limited English-speaking ability.

In developing criteria to assure that priority will be given to programs or projects serving areas with high concentrations of persons of limited English-speaking ability, the State library administrative agency shall consider—

(a) Individuals who were not born in the United States or whose native language is a language other than English; and

(b) Individuals who come from environments where a language other than English is dominant and who, because of this, have difficulty speaking and understanding instructions in the English language. (See Section 703(a) of Title VII of the Elementary and Secondary Education Act of 1965, as amended).

(20 U.S.C. 351d, 880b-1(a)(1))

§ 770.19 Long-range program.

(a) (1) The State library administrative agency shall develop the long-range program with the advice of the State advisory council and in consultation with the Secretary.

(2) The agency shall—

(i) Annually review and revise the long-range program in accordance with changing needs for assistance in the State;

(ii) Use the results of evaluations and surveys by the State agency and the State advisory council; and

(iii) Incorporate revisions into the annual program for each fiscal year.

(b) The long-range program shall contain the following:

(1) A description of the State's identified present and projected library needs.

(2) A plan for meeting those identified needs with funds under the Act over the next five fiscal years, beginning with the fiscal year in which the agency submits the program.

(3) For purposes of strengthening major urban resources libraries in accordance with section 102(c) (Uses of Federal Funds) of the Act—

(i) A description of the needs and demands for library services of individual users and other libraries in the regional areas served by major urban resource libraries; and

(ii) A plan for these libraries to provide services at a level sufficient to meet these needs.

(4) A statement of the following policies, criteria, priorities, and procedures, to be updated as required in meeting the State's library needs—

(i) Policies and procedures for the periodic evaluation of the effectiveness of programs and projects supported under the Act;

(ii) Policies and procedures for appropriate dissemination of the results of these evaluations and other information pertaining to these programs or projects;

(iii) Policies and procedures for the effective coordination of programs and projects supported under the Act with library programs and projects operated by institutions of higher education or local elementary or secondary schools and with other public or private library service programs;

(iv) Criteria used in allocating funds under title I (Library Services) of the Act among the purposes stated in section 102 (Uses of Federal Funds) of the Act and § 770.31 (*Library services*) of these regulations. These criteria shall be consistent with the criteria in the basic State plan under § 770.16(a)(2) (*Basic State plan*). They shall insure that the State will expend from Federal, State, and local sources a total amount not less than the amount expended by the State from these sources for State institutional library services and library services to the physically handicapped during the second preceding fiscal year;

(20 U.S.C. 354(3))

(v) Criteria, policies, and procedures for the approval of applications for the contruction of public library facilities under title II (Public Library Construction) of the Act. These shall insure that every local of other public agency whose application for construction funds under the plan is denied will be given an opportunity for a hearing before the State library administrative agency; and

(vi) Criteria, policies, and procedures for the approval of applications for interlibrary cooperation under title III (Interlibrary Cooperation) of the Act.

(20 U.S.C. 351a(12), 351d(d), 354, 355c, 355e-2)

§ 770.20 Annual program.

The State library administrative agency shall develop the annual program with the advice of the State advisory council and in consultation with the Secretary. The annual program shall contain the following:

(a) A detailed description of a program for the use of funds under each of the titles of the Act.

(b) A description of how each program will fulfill the State's library needs stated in the long-range program in a manner consistent with the policies, criteria, priorities, and procedures specified in the long-range program.

(c) A program description of the specific activities to be carried out by the State in the fiscal year—

(1) With funds for library services under title I (Library Services) of the Act for the purpose and activities stated in section 102 (Uses of Federal Funds) of the Act and § 770.31 (*Library services*); of these regulations; and

(2) With funds for interlibrary cooperation under title III (Interlibrary Cooperation) of the Act for the purposes and activities stated in section 302 (Uses of Federal Funds) of the Act and § 770.33 (*Interlibrary cooperation*) of these regulations.

(d) An annual extension of the five-year, long-range program for one additional year. This shall take into consideration the results of evaluations of the State's library program by the State library administrative agency and the State advisory council.

(20 U.S.C. 351a(13), 354, 355c, 355e-2)

§ 770.21 Notification of construction project approval and completion.

(a) The State agency shall submit to the Secretary on forms furnished by the Secretary—

(1) Written notification of its approval of each library construction project under title II (Public Library Construction) of the Act within 30 days of that approval; and

(2) Written notification, within 30 days, of the completion of each project.

(b) (1) The effective date of the library construction project shall be no earlier than the date on which the State agency approves the project.

(2) No construction contract for a project may be made by the applicant until—

(i) After the effective date of the project; and

(ii) After the State has received from the Secretary, or the Secretary's designee, acknowledgement of the receipt of the notification required under paragraph (a) of this section.

(20 U.S.C. 355c)

§ 770.22 Amendments.

(a) The State agency shall amend the long-range program to reflect changes in—

(1) Estimates of present and projected program needs;

(2) The plan of action for meeting these needs; and

(3) Policies, criteria, priorities, and procedures.

(b) The State library administrative agency shall submit these amendments each year as part of the long-range program extension.

(20 U.S.C. 351d, 354, 355c, 355e-2)

§ 770.23 Older readers services.

If funds are appropriated for Older Readers Services a State shall make appropriate amendments to its basic State plan, long-range program and annual program to meet the requirements of Title IV of the Act.

Subpart C—Federal Financial Participation

§ 770.31 Library services.

Except as provided in § 770.34 (*Use of Federal funds by State Library administrative agency*), funds allotted to a State for the purposes of Section 101 (Grants for States for Library Services) of title I (Library Services) of the Act shall be used solely for paying the Federal share of the cost of the activities accepted under Section 102 (Uses of Federal Funds) of the Act.

(20 U.S.C. 352; 353(a))

§ 770.32 Public library construction.

(a) *General.* Funds allotted to a State for the purpose of section 201 (Grants to States for Public Library Construction) of title II (Public Library Construction) of the Act may be used solely for the purpose of paying the Federal share of the cost of public library construction projects that—

(1) Are approved by the State library administrative agency;

(2) Are consistent with the State's long-range program submitted in accordance with § 770.19 (*Long-range program*); and

(3) Will result in a usable public library building under the State plan.

(b) [Reserved]

(c) At the discretion of the State agency, the following costs attributable to a public library construction project approved under this section are allowable if the recipient incurred these costs after the date of project approval or within the time period specified in paragraph (3) of this section:

(1) Erection of new buildings to be used for public library facilities.

(2) Expansion, remodeling, and alteration—as distinguished from maintenance and repair—of existing buildings to be used for public library purposes.

(3) Expenses—other than interest and the carrying charges on bonds—related to the acquisition of an existing building or of land on which there is to be construction of new buildings or expansion of existing buildings to be used for public library facilities.

These expenses must constitute an actual cost or transfer of public funds in accordance with the usual procedures generally applicable to all State and local agencies and institutions. The recipient must have occurred these expenses within three fiscal years preceding the fiscal year in which the State agency approved the project.

(4) Site grading and improvement of land on which these facilities are located.

(5) Architectural, engineering, and inspection expenses incurred after site selection.

(6) Expenses related to the acquisition and installation of initial equipment to be located in a public library facility provided by a construction project. This equipment includes all necessary building fixtures and utilities, office furniture, public library equipment. An applicant may not include the costs of books or other library materials.

(20 U.S.C. 352, 355b, 355e-1)

(d) *Display of signs.* A grantee or subgrantee that receives assistance for a construction project shall display, at the construction site, a sign stating that Federal funds provided under the Library Services and Construction Act are being used for this construction. If specifications call for a plaque in the completed building indicating the date of completion and source of funds, the grantee or subgrantee must note on the plaque that funds were provided under the Act.

(20 U.S.C 351b(a)(2), 355a-355c)

[44 FR 23846, Apr. 23, 1979, as amended at 45 FR 22533, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 770.33 Interlibrary cooperation.

Funds allotted to a State for the purposes of section 301 (Grants to States for Interlibrary Cooperation Programs) of title III (Interlibrary Cooperation) of the Act shall be used solely to pay the cost of carrying out the State plan as it relates to interlibrary cooperation. This includes—

(a) Planning for and taking steps leading to developing interlibrary cooperation; and

(b) Establishing, expanding, and operating local, regional, State or interstate cooperative projects or networks of libraries.

(20 U.S.C. 355e, 355e-1)

§ 770.34 Use of Federal funds by State library administrative agency.

In addition to the activities specified in section 102 (Uses of Federal Funds) funds allotted under the Act to a State for the purposes of section 101 (Grants for States for Library Services) of title I (Library Services) of the Act may also be used to pay the Federal share of the cost of the following activities of the State library administrative agency:

(a) Administration of the State plan submitted and approved under the Act and Subpart B (State Plan Provisions) of this part, including obtaining the services of consultants.

(20 U.S.C. 351f)

(b) Statewide planning for and evaluation of library services.

(c) Dissemination of information concerning library services.

(d) The activities of the State advisory council under § 770.4 (*State advisory council on libraries*) and of other advisory groups and panels that may be necessary to assist the State library administrative agency in carrying out its functions.

(e) Training of librarians and other library personnel engaged in activities under the Act.

(f) Otherwise strengthening the capacity of the State library administrative agency for meeting the needs of the people of the State and in carrying out the purposes of the Act.

(20 U.S.C. 352, 353(b))

(g) Administrative costs necessary to carry out activities (a) through (f): All Federal funds used for administrative costs must be matched equally by non-Federal funds.

§ 770.35 Federal and State shares of eligible expenditures.

(a) *General.* (1) The Secretary determines, under section 7(b) (Payments to States) of the Act, the Federal share for each State under titles I (Library Services) and II (Public Library Construction) of the Act.

(20 U.S.C. 351e(b))

(2) The State share for titles I (Library Services) and II (Public Library Construction) is the difference between the costs under the State plan and the applicable Federal share.

(3) The Federal share for each State under title III (Interlibrary Cooperation) is 100 percent.

(b) *Limitation.* (1) The expenditures that a State shall consider in computing its share for library services under title I (Library Services) are only those that are made from public funds. Public funds include contributions from private organizations or individuals if these funds are deposited, in accordance with State and local laws and regulations, to the account of the State or political subdivision or agency without conditions or restrictions that would negate their character as public funds.

(2) The expenditures that the State shall consider in computing its share for construction under title II (Public Library Construction) of the Act are those made by the applicant for that purpose, regardless of the source of funds.

(20 U.S.C. 351e(b), 355c-1(b))

Subpart D—Payments and Reports

§ 770.40 Conditions for payments to States.

The Secretary makes payments to a State under the Act only after the Secretary determines that—

(a) The State has on file—

(1) A basic State plan approved by the Secretary under § 770.16 (*Basic State plan*);

(2) A long-range program submitted and updated under § 770.19 (*Long-range program*); and

(3) An annual program submitted under § 770.20 (*Annual program*), for the fiscal year of the allotment;

(b) The State has satisfactorily assured the Secretary that it will have available for expenditure under title I (Library Services) of the Act during the fiscal year of the allotment—

(1) From State and local sources—

(i) Sums sufficient to earn its minimum allotment as stated in section 5(a) of the Act; and

(ii) Not less than the local amount actually expended in areas covered by the programs for the year for the purposes of these programs from those sources in the second preceding fiscal year; and

(2) From State sources—Not less than the total amount actually expended for these purposes from these sources in the second preceding fiscal year;

(c) In the case of payments under title I (Library Services) of the Act, the State during the year of the allotment, will expend from Federal, State, and local sources an amount not less than the total amount expended by the State from those sources for State institutional library services and library services to the physically handicapped during the second preceding fiscal year.

(d) The State has satisfactorily assured the Secretary that—with respect to library services of major urban resource libraries—it will not reduce the amount of Federal funds paid to an urban resource library for these services below the amount that the library received in the year preceding the year for which the determination is made under clause (2) of section 103 (State Annual Program for Library Services) of the Act; and

(e) The State has established a State advisory council on libraries under § 770.4 (*State advisory council on libraries*).

(20 U.S.C. 351d(a), 351e(a), 354, 354(3))

§ 770.41 [Reserved]

§ 770.42 Reports.

The State agency shall submit to the Secretary one copy of all surveys, films and other publications developed with Federal funds under the Act.

(20 U.S.C. 351d(b))

PART 773—COLLEGE LIBRARY RESOURCES PROGRAM

Subpart A—General

Sec.

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Authority: Part A of Title II of the Higher Education Act of 1965, as amended by the Education Amendments of 1980 (Pub. L. 96-374), 96 Stat. 1383 (20 U.S.C. 1021, *et seq.*)

Source: 46 FR 31866, June 17, 1981, unless otherwise noted.

Effective Date Note: At 46 FR 31866, June 17, 1981, Part 773 was revised effective Aug. 3, 1981. For the regulations remaining in effect until Aug. 3, 1981, consult Title 45 Part 131 of the Code of Federal Regulations revised as of October 1, 1980.

Subpart A—General

§ 773.1 College library resources program.

The College Library Resources Program assists institutions of higher education and other public and nonprofit private library institutions to—

(a) Improve the quality of their library resources, including law library resources; and

(b) Share their library resources through the establishment and maintenance of networks.

(Sec. 201, 211 of the Act; 20 U.S.C. 1021, 1029)

§ 773.2 Eligible applicants.

The following are eligible to apply for a grant under the College Library Resources Program:

(a) An institution of higher education.

(b) A branch of an institution of higher education.

(c) A combination of institutions of higher education.

(d) A public or nonprofit private library institution.

(Sec. 211 of the Act; 20 U.S.C. 1029)

§ 773.3 Eligibility limitations.

(a) A department library or a professional school within an institution of higher education may not apply separately as a branch.

(b) A grantee under Section 231 of the Act, Part C of Title II (Strengthening Research Library Resources), is ineligible to receive a grant under this part for the same fiscal year.

(Sec. 211, 231 of the Act; 20 U.S.C. 1029, 1041)

§ 773.4 Regulations that apply to the college library resources program.

The following regulations apply to the College Library Resources Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 Part CFR 77 (Definitions); and

(b) The regulations in this Part 773.

(20 U.S.C. 3474)

§ 773.5 Definitions that apply to the college library resources program.

(a) *Definitions in EDGAR.* The following terms used in this Part are defined in 34 CFR Part 77:

Acquisition
Applicant
Application
Award
Department
EDGAR

Fiscal Year
Grant
Grant Period
Nonprofit
Private
Public
Secretary

(b) *Definitions that apply to this part.* The following definitions apply to this part:

"Acquisition" means the term as defined in EDGAR, 34 Part 77. For the purposes of this program it also includes cataloging and necessary first binding.

"Act" means the Higher Education Act of 1965, as amended.

"Branch" means a campus of an institution of higher education if that campus is—

(1) Located in a community in the United States different from that of the parent institution;

(2) Not within a reasonable commuting distance from the main campus; and

(3) Offering college level programs for which library facilities, services, and materials are necessary.

"Combination of institutions of higher education" means—

(1) Institutions of higher education that have entered into a cooperative arrangement for the purpose of carrying out a common objective; or

(2) A public or nonprofit private agency, organization, or institution designated or created by a group of institutions of higher education for the purpose of carrying out a common objective on their behalf.

"Expenditures for total library purposes" means expenditures for the maintenance and operation of libraries, including salaries, wages, supplies, materials, and equipment.

"Institution of higher education" means, in any State, an educational institution that—

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of that type of certificate;

(2) Is legally authorized within the State to provide a program of education beyond secondary education;

(3) Provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program that is acceptable for full credit toward a bachelor's degree;

(4) Is a public or nonprofit private institution; and

(5) Is accredited by a nationally recognized accrediting agency or association or, if not so accredited—

(i) Is an institution with respect to which the Secretary has determined that there is satisfactory assurance—considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards and the purpose for which this determination is being made—that the institution will meet the accreditation standards of a nationally recognized accrediting agency or association within a reasonable time; or

(ii) Is an institution whose credits are accepted, on transfer, by not fewer than three institutions that are so accredited for credit on the same basis as if transferred from an institution so accredited.

(6)(i) The term also includes any school that provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provisions of paragraphs (1), (2), (4), and (5) of this definition.

(ii) For purposes of this definition, the Secretary publishes a list of nationally recognized accrediting agencies or associations that the Secretary determines to be reliable authority as to the quality of training offered.

(7) The term also includes, in any State, a public or nonprofit private educational institution that, in lieu of the requirement in paragraph (1) of this definition, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution.

"Library institution" means an institution that is not part of an institution of higher education and whose primary function is to provide library and information services to institutions of higher education on a formal cooperative basis. An institution meets this requirement if—

(1) It demonstrates that it provides more than 50 percent of its library and information services to students, faculty, or other researchers at an institution of higher education; and

(2) It provides these services on a cooperative basis under a formal written agreement with one or more institutions of higher education.

"Library material expenditures" means—

(1) Expenditures for books, periodicals, documents, magnetic tapes, phonograph records, audio-visual materials, cataloging materials, and other printed and published materials that—

(i) Are suitable for inclusion in the library resources and law library resources of institutions of higher education and other eligible library institutions; and

(ii) With the exception of periodicals and newspapers, with reasonable care and use may be expected to last for more than one year; and

(2) Expenditures for the necessary first binding of these printed and published materials, but not the acquisition of equipment or supplies, or the cost of construction.

"Network" means a cooperative organization formed to share library resources and to provide services—such as computer services and telecommunications—to its members. Its members may include institutions of higher education and public or nonprofit private library institutions.

"Resource Development Grant" means a grant made under Section 211 of the Act.

"State Agency" means the State agency designated under Section 1203 of the Act.

(20 U.S.C. 3474)

Subpart B—Kinds of Projects the Secretary Assists Under This Program

§ 773.10 Authorized activities.

(a) Funds awarded under this program may be used only—

(1) For the acquisition of books and other library materials; and

(2) To support the activities of a network, including, but not limited to, computer time, network membership; and user fees.

(b) Funds awarded under this program may not be used for—

(1) The acquisition of books and other library materials to be used primarily in connection with any medical library or similar facility that receives assistance in the same fiscal year for expanding or improving medical library resources under the Medical Library Assistance Act of 1965, as amended (42 U.S.C. 280b-7).

(2) Religious purposes. (See EDGAR, 34 CFR 75.532—"Use of funds for religion prohibited".)

(Sec. 211 of the Act; 20 U.S.C. 1029)

Subpart C—How To Apply for a Grant

§ 773.20 Limitations on number of applications.

An applicant may submit no more than one application in a fiscal year.

(Sec. 211 of the Act; 20 U.S.C. 1029)

§ 773.21 Application requirements.

In its application, an applicant shall:

(a) Provide information about itself and its library resources, and

(b)(1) Include an assurance that if it receives a grant under this program, it will meet the maintenance of effort requirement of § 773.40; or

(2) Request a waiver of the maintenance of effort requirement under § 773.22.

(20 U.S.C. 3474)

§ 773.22 Application for waiver of maintenance of effort.

(a) If an applicant requests a waiver of the maintenance of effort requirement in § 773.40, it shall provide in its application a detailed description of the circumstances that it believes justifies the request.

(b) If the Secretary determines that there are very unusual circumstances that prevent the applicant from making the assurance required in § 773.21(b), the Secretary may waive the maintenance of effort requirement.

(c) The Secretary may waive the maintenance of effort requirement because of very unusual circumstances that either—

(1) Temporarily reduce the level of library material expenditures and expenditures for total library purposes; or

(2) Result in unusually high library material expenditures and expenditures for total library purposes.

(d) Very unusual circumstances include:

(1) Theft, vandalism, fire, flood, earthquake, or other exceptional and unforeseen occurrences;

(2) The establishment of a basic program of library service in the first five years of institutional operation;

(3) Sudden and substantial increases in enrollment; or

(4) Sudden and substantial increases in activities (e.g., library materials expenditures) due to an unusual, one-time receipt of funds.

(Sec. 211 of the Act; 20 U.S.C. 1029)

§ 773.23 Application from a combination of institutions.

In the case of an application from a combination of institutions of higher education, the combination may apply for:

(a) Its own grant; and

(b) If its members do not apply on their own behalf, of each of its members.

For example, combination A is composed of three institutions of higher education, X, Y, and Z. The combination A may apply for one resource development grant for itself, and it may also apply for separate grants on behalf of X, Y, and Z. However, X, Y, and Z may not apply separately if the combination A applies on their behalf.

(Sec. 211 of the Act; 20 U.S.C. 1029)

Subpart D—How the Secretary Makes a Grant

§ 773.30 How the Secretary judges applications.

The Secretary awards a grant to each eligible applicant that demonstrates its compliance with the Act and these regulations.

(Sec. 211 of the Act; 20 U.S.C. 1029)

§ 773.31 Amount of grant.

(a) The amount of a resource development grant may not exceed $10,000 for any fiscal year.

(b) The Secretary determines the amount of a resource development grant annually by dividing the amount of available funds by the number of eligible applicants that demonstrate compliance with the Act and these regulations.

(Sec. 211 of the Act; 20 U.S.C. 1029)

Subpart E—Conditions That Must Be Met by Grantee

§ 773.40 Maintenance of effort requirement.

During the fiscal year for which it has requested a grant, a grantee shall expend for all library material expenditures an amount—from funds other than funds received under this program—that equals or exceeds either—

(a) The average annual aggregate amount it expended for those materials during the two fiscal years preceding the fiscal year for which it is seeking assistance; or

(b)(1) The average amount per full-time equivalent student it expended for those purposes during the two fiscal years preceding the fiscal year for which it is seeking assistance.

(2) For the purposes of this section, the number of full-time equivalent students means—

(i) The sum of the number of students enrolled full-time at an institution; plus

(ii) The full-time equivalent of the number of students enrolled part time at this institution. This is determined by dividing the sum of the credit hours of all part-time students by twelve.

(Sec. 211 of the Act; 20 U.S.C. 1029)

§ 773.41 Coordination with other groups.

A grantee under this part shall annually inform the State agency designated under section 1203 of the Act of its project activities.

(Sec. 202 of the Act; 20 U.S.C. 1022)

PART 774—GRANTS TO STATE EDUCATIONAL AGENCIES FOR EDUCATIONAL IMPROVEMENT, RESOURCES, AND SUPPORT

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Subpart A—General

§ 774.1 Educational improvement, resources, and support.

These regulations apply to the following programs authorized by Title IV of the Elementary and Secondary Education Act:

(a) Instructional Materials and School Library Resources (Part B). The basic purpose of Part B is to assist local educational agencies (LEAs) in the acquisition of necessary books, educational materials, library resources, and instructional equipment.

(b) Improvement in Local Educational Practice (Part C). The basic purpose of Part C is to strengthen the quality of elementary and secondary education through support of locally initiated projects and activities designed to improve educational practices.

(c) Guidance, Counseling, and Testing (Part D). The basic purpose of Part D is to strengthen and expand guidance, counseling, and testing programs in elementary and secondary schools.

(Sec. 401 of the Act; 20 U.S.C. 3081)

§ 774.2 Eligibility.

Title IV is a State-administered program to benefit public and private elementary and secondary school children. A State may apply for funds under Title IV by submitting to the Secretary a plan describing its programs for Parts B, C, and D. Following approval of the plan, the Secretary awards grants for these programs to the State educational agency (SEA). The SEA then awards subgrants to an LEA—or groups of LEAs—for these programs on the basis of written project applications submitted to the SEA. The Department of the Interior may apply for title IV funds for children and teachers in elementary and secondary schools it operates for Indian children. The Department of Defense may apply for Title IV funds for children and teachers in schools it operates for overseas dependents.

(Sections 403 and 404 of the Act; 20 U.S.C. 3083 and 3084)

§ 774.3 Regulations that apply to title IV.

(a) The following regulations apply to the title IV program—

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-administered Programs), except §§ 76.650-76.662 (Participation of Students Enrolled in Private Schools);

(2) EDGAR 34 CFR Part 77, (Definitions);

(3) The regulations in this part.

(b) If an SEA administers title IV under the provision of Title V, Part A of the Elementary and Secondary Education Act (ESEA), the regulations in 34 CFR Part 209 also apply.

(Sec. 401 of the Act; 20 U.S.C. 3081)

§ 774.4 Definitions as used in this part.

"Academic subjects" means, but is not limited to, the following elementary and secondary school subjects: The arts, civics, economics, English, geography, history, the humanities, industrial arts, mathematics, foreign languages, reading, and science.

(Sec. 421 of the Act; 20 U.S.C. 3101)

"Act" means Title IV of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978 (Pub. L. 95-561) and Technical Amendments Related to the Education Amendments of 1978 (Pub. L. 96-46).

(Sec. 401 of the Act; 20 U.S.C. 3081)

"Handicapped children" means those children who are mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multi-handicapped, or have specific learning disabilities, and who because of those impairments need special education and related services. The specific terms used in this definition are defined in 34 CFR 300.5.

(Sec. 432(c) of the Act; 20 U.S.C. 3112(c))

"Instructional equipment" means equipment that is appropriate for use in providing education in academic subjects in elementary and secondary schools and that is used to teach or learn an academic subject. The eligibility of instructional equipment is determined by its intended use and its direct relationship to instruction in an academic subject. Depending upon use, typical examples of instructional equipment include—

(a) Laboratory or other special equipment that contributes directly to the objectives of an instructional program;

(b) Electronic or mechanical audiovisual equipment, such as audio and computer devices and TV monitors;

(c) Equipment for the storage and protection of instructional materials and equipment; and

(d) Equipment for the maintenance and repair of audiovisual materials.

The term does not include general purpose classroom or library furniture, shelving, stoves, refrigerators, bleacher seats, equipment for staff offices, physical education equipment, or other equipment not directly related to instruction in academic subjects. The term, however, does include musical instruments if used for instructional purposes in music classes in the school's regular instructional program.

(Sec. 421 of the Act; 20 U.S.C. 3101)

"Instructional materials" means school library resources, textbooks, realia, raw materials for the preparation of instructional resources, and all printed and published materials that are suitable for providing instruction in elementary and secondary schools. Instructional materials are, with reasonable care, expected to last more than one year. The term does not include furniture, supplies consumed in the instructional process (e.g., paper, pencils, chalk, chemicals), or instructional equipment.

(Sec. 421 of the Act; 20 U.S.C. 3101)

"Insular area" means Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(Sec. 401 of the Act; 20 U.S.C. 3081)

"Part B" means the Instructional Materials and School Library Resources Program.

(Sec. 421 of the Act; 20 U.S.C. 3101)

"Part C" means the Improvement in Local Educational Practice Program.

(Sec. 431 of the Act; 20 U.S.C. 3111)

"Part D" means the Guidance, Counseling, and Testing Program.

(Sec. 441 of the Act; 20 U.S.C. 3121)

"Preceding fiscal year" means the twelve-month fiscal period most commonly used in the State for official reporting purposes prior to the beginning of the Federal fiscal year for which funds are available.

(Sec. 404(a)(7) of the Act; 20 U.S.C. 3084(a)(7))

"Private school" means a nonprofit elementary or secondary school that is operated or controlled by an agency, organization, or institution that is not under Federal or public supervision or control.

(Sec. 406(a)(1) of the Act; 20 U.S.C. 3086(a)(1))

"Realia" means artifacts, dioramas, games, models, and educational toys.

(Sec. 401 of the Act; 20 U.S.C. 3081(a)(1))

"School library resources" means printed and published materials that are cataloged or organized for the instructional use of elementary and secondary school children and teachers. The term includes books, periodicals, documents, pamphlets, reproductions, pictorial or graphic works, musical scores, maps, charts, globes, sound recordings, processed slides, transparencies, films, filmstrips, video tapes, or any other printed or audiovisual materials of a similar nature available now or in the future.

(Sec. 421(1) of the Act; 20 U.S.C. 3101(1))

"Second preceding fiscal year" means the second twelve-month fiscal period most commonly used in a State for official reporting purposes prior to the Federal fiscal year for which funds are available.

(Sec. 404(a)(7) of the Act; 20 U.S.C. 3084(a)(7))

"Strengthening State Educational Agency (SEA) Management" refers to the program authorized by title V, part B of the Act.

(Sec. 521 of title V of the Act; 20 U.S.C. 3161)

"Testing" means the use of tests to measure abilities, educational achievements, interests, or aptitudes pertaining to an individual's educational or career development.

(Sec. 441(a) of the Act; 20 U.S.C. 3121(a))

"Textbook" means a book, reusable workbook, or manual, whether bound or in looseleaf form, intended for use as a principal source of study material for a given class or group of students, a copy of which is expected to be available for the individual use of each student in the class or group.

(Sec. 421(1) of the Act; 20 U.S.C. 3101(1))

[45 FR 23603, Apr. 7, 1980, as amended at 45 FR 58363, Sept. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

Subpart B—How a State Applies for a Grant

§ 774.10 Documents the State must submit to get a grant.

(a) To receive a grant a State shall submit to, or have on file with, the Secretary—

(1) A general application that in the opinion of the Secretary satisfies the single State application requirements of title V of ESEA (section 501) and 34 CFR Part 209, or of section 435 of the General Education Provisions Act (GEPA), whichever applies; and

(2) A State plan that describes the purposes for which the funds applied for will be spent. The State plan must be detailed enough to allow the Secretary to determine whether it satisfies the requirements of the Act and these regulations. The State shall include in its plan the specific assurances and items of information listed in the appendix to this part.

(b) To receive a grant, the Department of the Interior or Department of Defense shall submit to the Secretary a program plan that describes the purposes for which the funds will be used. The program plan—

(1) Need not be submitted more often than once every three years; and

(2) Must contain the assurances and information required by the Secretary.

(Secs. 403(c) and 404(a) of the Act; 20 U.S.C. 3083(c) and 3084(a))

§ 774.11 Conditions the State must meet before submitting a plan—State Advisory council.

A State that desires to receive title IV funds shall establish a State advisory council (SAC).

(a) The SAC shall be broadly representative of the cultural and educational resources of the State, including—

(1) Teachers, principals, superintendents, and other professional employees of LEAs and private schools;

(2) Teachers from institutions of higher education;

(3) School librarians, personnel involved in operating media programs in local schools, and guidance counselors;

(4) Individuals from fields of professional competence in dealing with children needing special education because of physical or mental handicaps, specific learning disabilities, severe educational disadvantages, and limited English proficiency or because they are gifted or talented, and of professional competence in guidance and counseling; and

(5) Parents, students, and other interested members of the public.

(b) A single member of the council may represent more than one of these resources.

(c) The State's annual certification of council membership must provide the name of each member of the council, including its chairperson, as well as the specific resource or resources each member represents. In addition, the State shall retain, and furnish to the Secretary upon request, a description of the qualifications of each council member.

(d) The Secretary notifies the SEA in writing when the certification has been accepted.

(Sec. 404(b) of the Act; 20 U.S.C. 3084(b))

§ 774.12 Conditions the State must meet before submitting a plan—maintenance of effort.

(a) *General requirements.* (1) To receive Part B funds, Part C funds to conduct the Strengthening SEA Management program, or Part D funds, a

State shall have expended during the preceding fiscal year for the purposes of each of these programs an amount of non-Federal funds that at least equals the amount of non-Federal funds it expended for the purposes of each of these programs during the second preceding fiscal year.

(2) The comparison of expenditures for the two years may be made on the basis of—

(i) Either the aggregate non-Federal expenditures for each of these programs made by the State, its LEAs, and the private schools in the State; or

(ii) The aggregate per student expenditures of the State, its LEAs, and private schools.

(b) *Aggregate expenditures.* The State may measure aggregate non-Federal expenditures for programs described in Part B, Part D, or in Title V, Part B, respectively, by either of the following methods:

(1) Totalling the expenditures made by the State, all its LEAs, and the private schools in the State that enroll students who will participate during the fiscal year for which funds are available or

(2) Totalling the expenditures made by the State, its LEAs that will participate in the fiscal year for which funds are available, and the private schools in the State that enroll students who will particpate in the fiscal year for which funds are available.

(c) *Aggregate per student expenditures.* The State may measure aggregate per student non-Federal expenditures for programs described in Part B, Part D, or in Title V, Part B, respectively, by either of the following methods:

(1) Dividing the aggregate expenditures computed under paragraph (b)(1) of this section by the total number of students in average daily attendance (ADA)—or any other basis commonly and consistently used in a State from year to year—in all the public schools in the State and in private schools that enroll students who will particpate in the fiscal year for which funds are available; or

(2) Dividing the aggregate expenditures computed under paragraph (b)(2) of this section by the total number of students in ADA—or on any other basis commonly and consistently used in the State from year to year—in public schools in LEAs that will participate in the fiscal year for which funds are available and in private schools that enroll students who will participate in the fiscal year for which funds are available.

(d) *Averaging expenditures.* (1) If non-Federal expenditures for programs described in Part B, Part D, or in Title V, Part B, depend upon a State or local appropriation that is not an annual appropriation, the State may average its non-Federal expenditures for those programs over the number of fiscal years for which the appropriation was made.

(2) A State that chooses to average its expenditures in this way shall continue to use this method for computing maintenance of effort for each fiscal year for which the State or local appropriation was made.

(3) A State that does not average its expenditures shall attribute all expenditures to the fiscal year in which they were incurred.

(e) *State's authority to exclude LEAs or children enrolled in private schools.* A State, by rule, may exclude from participation in Parts B or D—

(1) An LEA that has failed to maintain its non-Federal expenditures, if the Secretary declines to waive the State's requirement to maintain its expenditures, and if that LEA's failure to maintain its expenditures would prevent the State from complying with paragraph (a) of this section;

(2) Students enrolled in a private school that has failed to maintain its expenditures, if the Secretary declines to waive the State's requirement to maintain its expenditures, and if that private school's failure to maintain its expenditures would prevent the State from complying with paragraph (a) of this section; or

(3) An LEA, or students enrolled in a private school, that fails to submit data that the State requires to determine compliance with this section.

(f) *Collecting and maintaining data.* The SEA shall collect and maintain data—including data from private schools—that verify the State's compliance with this section or §§ 774.90-

774.92 of these regulations. The State shall make these data available to the Secretary upon request.

(g) *Separate compliance.* The Secretary determines whether a State is complying with the maintenance of effort requirement separately for the programs authorized by Part B, Part D, and Title V, Part B of the Act.

(Sec. 404(a)(7) of the Act and Sec. 431(A) of GEPA; 20 U.S.C. 3084(a)(7) and 1232-1)

Subpart C—How a Grant Is Made to a State

§ 774.20 Determination of the total amount available for a State grant.

The Secretary determines for each fiscal year the total amount of Parts B, C, and D funds for which a State, an insular area, the Department of Defense and the Department of the Interior may apply.

(a) In determining the amounts for which a State—other than an insular area—may apply, the Secretary allots to each State an amount which bears the same ratio to the amounts appropriated, respectively, for Parts B, C, and D as the number of children aged five to seventeen, inclusive, in the State bears to the number of those children in all the States.

(b) In determining the amount for which an insular area may apply, the Secretary considers the number of children enrolled in the elementary and secondary schools in that insular area.

(c) In determining the amount for which the Department of Defense and the Department of the Interior may each apply, the Secretary considers the number of children enrolled in elementary and secondary schools operated by that department.

(Sec. 403 of the Act; 20 U.S.C. 3083)

§ 774.21 Reallocation of excess funds.

The Secretary may, for any fiscal year, determine that the amount of Parts B, C, or D funds made available to a State—other than an insular area—exceeds the amount of funds that the State requires to carry out projects under that part for that fiscal year. The Secretary may then reallocate these excess funds.

(Sec. 403(b) of the Act; 20 U.S.C. 3083(b))

Subpart D—How To Apply to the State for a Subgrant

§ 774.30 Documents the applicant must submit to get a subgrant.

(a) To receive a subgrant of Part B, C, or D funds, an LEA shall submit to, or have on file with, the SEA—

(1) A general application that satisfies the single LEA application requirements of title V of ESEA (section 502) and 34 CFR Part 209 or of GEPA (section 436), whichever applies; and

(2) A project application, in the form required by the SEA, that describes the purposes for which the funds will be spent. The LEA shall include in its project application sufficient detail to enable the SEA to determine whether the application satisfies the requirements of the Act and these regulations.

(b) To receive a subgrant of Part B or D funds, an LEA need not submit a project application more often than once every three years. However, an SEA may require an LEA to supplement annually its project application for Part B or D funds with the information it needs to determine whether the LEA is complying with the requirements of the Act, including:

(1) Enrollment and expenditure data needed by the SEA to determine if the State is maintaining its fiscal effort,

(2) Information needed by the SEA to determine whether the LEA is complying with the requirements dealing with the participation of private school children; and

(3) Information pertaining to any material changes in project objectives or use of funds.

(c) (1) An SEA may approve an LEA application for a multi-year part C project—subject to the availability of funds—in accordance with § 774.41 (*Multi-year part C projects*).

(2) Each year after the first year of the project, the LEA shall supplement its project application with the information the SEA requires to determine whether the LEA is making satisfactory progress toward meeting the objective of its project, and is complying

with the requirements of the Act and these regulations.

(d) The Department of Defense, the Department of the Interior, or an insular area may designate administrative units to submit project applications that are consistent with the requirements of this section.

(Sec. 403(c), 404(a), and 432(a) of the Act; 20 U.S.C. 3083(c), 3084(a), and 3112(a))

§ 774.31 Provisions required in the documents.

(a) (1) In each project application it submits to the SEA, an LEA shall clearly demonstrate that it has complied with § 774.71 (*Consultation with representatives of private school students*).

(2) In each project application it submits to the Department of Defense, the Department of the Interior, or insular area, an administrative unit shall clearly demonstrate that it has complied with § 774.71.

(b) Each project application submitted by an LEA to an SEA—or by an administrative unit to an insular area or department—must include—

(1) The number of public and private school children enrolled in the schools located within its boundaries;

(2) The number of public and private school children to be served by the project;

(3) A description of how the public and private school children selected to participate were chosen;

(4) A description of when and where public and private school children will be served by the project;

(5) An explanation of any differences noted in paragraph (b)(4) of this section;

(6) An explanation of any adjustments made in per student expenditures under § 774.74 (*Expenditures*); and

(7) If required by the SEA, the names and addresses of all private schools within its boundaries.

(c) An SEA may require an LEA—or an insular area or department may require an administrative unit—to provide the information required by paragraphs (a) and (b) of this section for each fiscal year during which the LEA or administrative unit participates in Parts B, C, or D of the Act.

(Secs. 406(a), 406(b), and 432(d) of the Act; 20 U.S.C. 3086(a), 3086(b), and 3112(d))

Subpart E—How a Subgrant Is Made to an Applicant

§ 774.40 Determination of the amount of the subgrant.

(a) (1) An SEA shall make a subgrant to an LEA of Part B funds based on enrollments in public and private schools within the school districts of those agencies, adjusted to provide higher per pupil allocations to—

(i) LEAs whose tax effort for education is substantially greater than the State average tax effort for education, but whose per pupil expenditure (excluding payments made under Title I of this Act) is no greater than the average per pupil expenditure in the State; and

(ii) LEAs which have the greatest numbers or percentages of children whose education imposes a higher than average cost per child, such as children from low-income families, children living in sparsely populated areas, and children from families in which English is not the dominant language.

(2) For the purpose of computing the amount of a subgrant to an LEA selected by the SEA because of high tax effort or because of a large number or percentage of high cost children, a higher per pupil allocation means an additional per pupil amount that is at least equal to the per pupil amount the SEA awards to each LEA based on enrollment.

(3) An SEA may decline to award higher per pupil allocations to LEAs because of high tax effort only if it provides enough information in its State plan to allow the Secretary to determine that—

(i) No LEA in the State is making a substantially greater than average local tax effort; or

(ii) If any LEA in the State is making a substantially greater than average local tax effort, its per pupil expenditures exceed the State average per pupil expenditure.

Example. Assume that a State received $2,112,500 in Part B funds and that the maximum administrative allowance for

Title IV is $225,000. The State chooses to use $112,500 to administer the Part B program. This amount ($112,500) is subtracted from the Part B allocation ($2,112,500) leaving $2,000,000 for LEA program funds. The State has a total enrollment of 500,000 public and private school children, and has identified as "high cost" children, those in (1) rural LEAs, and (2) bilingual children in LEAs whose enrollment is more than 10 percent bilingual. Allotting 50 percent of the $2,000,000 total ($1,000,000) on the basis of enrollment (500,000 children) will generate $2.00 to be allotted for benefits for each child in the State. The remaining $1,000,000 might be divided by allotting 20 percent of the total grant ($400,000) to 200,000 children in LEAs that are eligible under the high tax effort factor, or an additional $2.00 per child (as much as is received under the enrollment factor). From the remaining 30 percent of the grant, the State might allocate $400,000 to 200,000 children enrolled in rural LEAs (that is, an additional $2.00 per child) and $200,000 to LEAs with 100,000 bilingual children (again, $2.00 additional per child). Note that this formula provides for the cumulation of higher per pupil allocations. For example, a child enrolled in an LEA selected under the high tax effort factor as well as one high cost factor would generate $6.00 per child.

EXAMPLE OF FORMULA MEETING PROPOSED MINIMUM REQUIREMENT

Total part B allotment—$2,112,500; State administration—$112,500

	Enrollment	High tax effort	High cost	
			Rural	Bilingual
Percent program funds	50	20	20	10
Program funds ($)	1,000,000	400,000	400,000	200,000
Number of children	500,000	200,000	200,000	100,000
Amount per child ($)	2.00	2.00	2.00	2.00
Number of LEA's	170	65	120	60

(b) An SEA shall make a subgrant of Part C funds to an LEA on an equitable, competitive basis.

(c) An SEA shall make a subgrant of Part D funds to an LEA in accordance with the distribution procedures described in the State plan. These funds may be allocated on the basis of a formula, such as student enrollment, or an equitable competition.

(Secs. 404(a)(5), 422(a), and 441(a) of the Act; 20 U.S.C. 3084(a)(5), 3102(a), and 3121(a))

§ 774.41 Multi-year Part C projects.

(a) Subject to the availability of funds, an SEA may make a commitment to an LEA to fund a particular project with Part C funds for more than one fiscal year, but for not more than five fiscal years, excluding the period during which the LEA received a planning grant for the project. A subgrant to plan a project may be for no more than one fiscal year.

(b) Before the SEA makes a commitment to multi-year funding, it shall determine that the LEA intends to adopt the project activities, if successful, as part of its regular educational program when Part C funds are no longer provided. For the purpose of this requirement, no activity that is supported by funds for which the LEA must compete against other LEAs or similar applicants may be considered part of its regular educational program.

(c) If an SEA makes a subgrant to an LEA for a particular project that has been supported by Part C funds during three preceding years, the SEA shall, in comparison to the amount of the subgrant for the third fiscal year, reduce the amount of the subgrant substantially. Similarly, if an SEA makes a subgrant of Part C funds to an LEA for a particular project for a fifth fiscal year, the SEA shall, in comparison to the amount of the subgrant for the fourth fiscal year, reduce the amount of the subgrant substantially.

(d) An LEA shall include the following information in its application for Part C funds for the fourth or fifth year of a particular project:

(1) How the LEA will compensate for the reduction of Part C funds in the fourth and fifth year of the project without reducing the project's scope and quality.

(2) How the LEA will incorporate the activities of the project into its regular educational program after Part C funds are no longer provided.

(3) How the LEA will continue to provide with Federal funds equitable benefits to private school children who participate in the project.

(e) For the purpose of applying the requirements of this section to multi-year Part C projects already in operation for three years prior to the effective date of these regulations, the SEA may consider the subgrant it makes to an LEA for school year 1979-80 to continue this type of multi-year Part C project as though it were for the third year of that project.

(Secs. 406(a) and 432(a) of the Act; 20 U.S.C. 3086(a) and 3112(a))

§ 774.42 Reallocation.

(a) An SEA may, from time to time, reallocate Part B funds from an LEA that has chosen not to participate or does not choose to expend the full amount made available to it. A reallocation of funds must be consistent with the requirements for the participation of private school children and with the procedure described in the State plan for determining the amount of subgrants for Part B.

(b) If an SEA makes subgrants of Part D funds available to LEAs on the basis of a formula, such as student enrollment, it may similarly reallocate excess Part D funds.

(Secs. 422(a) and 441(a) of the Act; 20 U.S.C. 3102(a) and 3121(a))

Subpart F—Conditions That Must Be Met by the State and Its Subgrantees

§ 774.50 Use of funds—SEAs.

(a) In a fiscal year in which the provisions of Title V of ESEA dealing with the conditions for appropriations of State administrative funds are not met—

(1) (i) A State—other than an insular area—may use to administer its State plan the larger of the following amounts—

(A) Five (5) percent of the Title IV funds received for that fiscal year, excluding any funds used for the purpose of the State's strengthening program, or

(B) $225,000.

(ii) The State shall then make available to LEAs—for purposes described in paragraph (a)(1) of this section (iii)—the remaining amount of its total Title IV allotment, after any reallocation by the Secretary. However, the SEA shall exclude from the amount made available to LEAs any amount of Part C funds to be expended for the strengthening SEA Management program or of Part D funds for State leadership in guidance, counseling, and testing.

(iii) An LEA shall use the amount made available under paragraph (a)(1)(B)(ii) of this section only to acquire instructional materials and equipment under Part B; improve local educational practices under Part C; and conduct guidance, counseling, and testing programs under Part D.

(b) In a fiscal year in which the provisions of Title V of ESEA dealing with the conditions for appropriations of State administrative funds are met, all the above requirements apply except those pertaining to State administrative funds.

(Secs. 403(a), 403(c), 404(a)(8), and 441(b) of the Act; 20 U.S.C. 3083(a), 3083(c), 3084(a)(8), and 3121(b))

§ 774.51 Use of funds—Insular Areas.

(a) In any fiscal year an insular area may use no more than $75,000 to administer its State plan.

(b) The insular area shall then use for the purposes described in paragraph (c) of this section, the remaining amount of its total Title IV allotment. However, the insular area shall exclude from the amount available for paragraph (c) of this section any amount to be expended for the Strengthening SEA Management program or for State leadership in guidance, counseling, and testing.

(c) The insular area shall use the amount made available under paragraph (b) of this section only to acquire instructional materials and equipment under Part B; improve local educational practices under Part C; and conduct guidance, counseling, and testing programs under Part D.

(d) Each insular area shall use a substantial amount of its Part B grant and its Part D grant, if distributed on a formula basis, to benefit children who have the greatest educational need.

(Secs. 403(a), 403(c), 404(a)(8), and 441(b) of the Act; 20 U.S.C. 3083(a), 3083(c), 3084(a)(8), and 3121(b))

§ 774.52 Use of Funds—Departments of Defense and the Interior.

(a) In any fiscal year the Department of the Interior may use no more than $75,000 to administer its program plan.

(b) The department shall then use the remaining amount of its total Title IV allotment only to acquire instructional materials and equipment under Part B; improve local educational practices under Part C; and conduct guidance, counseling, and testing programs under Part D.

(c) The Department of Defense and the Department of the Interior shall use a substantial amount of its Part B grant and its Part D grant, if distributed on a formula basis, to benefit children who have the greatest educational need.

(Sec. 403(c) of the Act; 20 U.S.C. 3083(c))

§ 774.53 Use of Part C funds—SEAs, Insular Areas, and Departments of Defense and the Interior.

(a) In a fiscal year in which the provisions of Title V of ESEA dealing with the conditions for appropriations for the Strengthening SEA Management program are not met, a State—including an insular area—may use the larger of the following amounts—

(1) Fifteen (15) percent of the Part C funds received for that fiscal year; or

(2) The amount it received for Strengthening State and Local Educational Agencies for fiscal year 1973 to conduct the Strengthening SEA Management program as described in the approved State plan.

(b) In any fiscal year the Department of Defense and the Department of the Interior may not use Title IV funds for the Strengthening SEA Management program.

(c) In awarding subgrants of Part C funds, an SEA shall comply with—

(1) Section 431(b)(2) of the Act which requires that in any fiscal year in which the State receives more Part C funds than it received in fiscal year 1979, at least 50 percent of the additional amount must be used for innovatives and improved compensatory education projects;

(2) Section 432(b)(1) and (2) of the Act which require that—

(i) In fiscal year 1980 any State that receives more Part C funds than it received in fiscal year 1979 must allocate at least 5 percent of the additional amount for projects to improve school management;

(ii) In fiscal year 1981 and each succeeding fiscal year any State that receives more Part C funds than it received in fiscal year 1979 must allocate at least 10 percent of the additional amount for projects to improve school management;

(iii) The SEA may not approve a project to improve school management unless the LEA has developed its project application in consultation with a committee composed of administrators, teachers, other staff at the school, and parents whose children attend the school, and that committee has approved that project application.

(3) Section 432(c) of the Act which requires the State to expend no less than 15 percent of its Part C grant—excluding funds available for the Strengthening SEA Management program—for special projects for handicapped children. The special projects for handicapped children must be designed to meet the special educational needs of those children.

(d) In judging a competition among LEAs for Part C funds, an SEA may take into consideration which of the program purposes or activities an LEA seeks to support.

(Secs. 403(c), 404(a)(9), 431, 432(b), and 432(c) of the Act; 20 U.S.C. 3083(c), 3084(a)(9), 3111, 3112(b), and 3112(c))

§ 774.54 Use of Part C funds—supplementing Part C subgrants.

(a) An SEA may reserve a small amount of Part C funds for the purpose of supplementing its subgrants for Part C projects.

(b) Alternatively, if—after awarding all of its Part C funds for a fiscal year for Part C subgrants—the SEA determines that not all of those funds will be obligated by one or more LEAs during that grant period, the SEA may recover those funds and use them to supplement other Part C projects.

(c) An SEA that intends to supplement Part C projects in any way shall include in its State plan a description of the process and the competitive criteria it will use in considering an LEA's request for supplemental funding.

(d) If an SEA reserves funds for supplementation, it shall include the amount in its State plan.

(e) An SEA may not award supplementary Part C funds to enable an LEA to conduct activities beyond the scope of that LEA's approved application.

(Sec. 404(a)(5) of the Act; 20 U.S.C. 3084(a)(5))

§ 774.55 Use of Part D funds—SEA, Insular Areas, and Departments of Defense and the Interior.

(a) An SEA may use no more than 7½ percent of its Part D grant for any fiscal year for State leadership and supervisory activities.

(b) The Departments of Defense and the Interior may not use Part D funds for State leadership and supervisory activities.

(c) If Part D funds are distributed on a competitive basis, the criteria for selection must be based on the quality of proposed projects and not the purposes for which the funds will be used.

(Secs. 441 and 442 of the Act; 20 U.S.C. 3121 and 3122)

§ 774.56 Use of Part B funds—LEAs.

(a) Subject to the requirements dealing with the participation of private school children, an LEA that receives a subgrant of Part B funds shall have complete discretion in selecting which of the program purposes it wishes to support with those funds.

(b) Subject to the requirements dealing with the participation of private school children, an LEA may, when acquiring instructional materials and equipment with Part B funds, concentrate upon meeting the educational needs of children in one or more of the schools within its boundaries.

(c) When selecting instructional materials and equipment, an LEA that receives higher per pupil allocations of Part B funds due to the presence of a large number or percentage of children whose education imposes a higher than average per pupil cost shall consider the special educational needs of those children.

(d) The LEA shall make available to all children attending a school, all the instructional materials and equipment acquired with Part B funds and placed in that school.

(Secs. 421 and 422 of the Act; 20 U.S.C. 3101 and 3102)

§ 774.57 Use of Part C funds—LEAs.

(a) An LEA that receives a subgrant of Part C funds shall use those funds primarily for activities that will improve its own educational practices. This means that an LEA that receives a subgrant of Part C funds—

(1) May not transmit those funds to another LEA to pay the costs of the other LEA's project unless the LEA that receives the subgrant is acting as the agent for a consortium (of which it is a member) whose joint project application for Part C funds has been approved by the SEA;

(2) May not use those funds to disseminate training materials or project information to the representatives of children enrolled in schools outside the LEA, except in response to a specific request;

(3) Shall give priority to requests for training received from the representatives of children enrolled in schools within its own boundaries;

(4) May not use those funds to provide training to the representatives of school children enrolled in a school located in another State.

(b) In connection with the educational practices it has either developed or adopted with Part C funds, an LEA may, in response to a specific request, use Part C funds within the State to—

(1) Disseminate training materials and project information—including evaluation results—to representatives of children enrolled in public and private schools outside its boundaries;

(2) Provide technical assistance and training to the representatives of children enrolled in public and private schools outside its boundaries; and

(3) Attend meetings to describe its project to representatives of children

enrolled in public and private schools outside its boundaries.

(c) An LEA may not use Part C funds for the purposes described in paragraph (b) of this section unless the SEA specifically approves. Before approving, the SEA must determine—

(1) That the educational practices developed or adopted by the LEA with Part C funds—

(i) Are successful in that LEA, as shown by data that clearly demonstrate significant improvement of its educational practices;

(ii) Have been installed in the schools within the LEA's boundaries (or are in the process of being installed in accordance with a plan approved by local school authorities) where appropriate and feasible;

(iii) Are being adequately supported, irrespective of the source of funds, for the benefit of children enrolled in public and private schools within the LEA boundaries; and

(2) That the amount of Part C funds to be used for the purposes described in paragraph (a) of this section is reasonable considering the extent to which—

(i) The educational practices developed or adopted by the LEA with Part C funds have already been installed in the schools within the LEA's boundaries;

(ii) There is a demand for demonstrations of the educational practices elsewhere in the State.

(d) In any fiscal year the amount of Part C funds an LEA may use under paragraph (b) of this section to demonstrate educational practices outside its boundaries may not exceed the amount of funds, irrespective of the source, the LEA uses to support those educational practices within its boundaries.

Example: To *operate* the program for public and private school children within its boundaries the LEA determines that the following amounts will be needed:

ESEA Title IV-C	$2,000
Other Federal	3,000
LEA	1,000
Total	6,000

To *demonstrate* the program outside its boundaries for the benefit of public and private school children, the maximum amount available is: $6,000. The maximum amount of the Title IV-C grant would be: $8,000.

NOTE: If this grant is for the fourth year of funding, the total amount would have to be substantially less than the ESEA Title IV-C grant for the third year. Likewise, the grant for the fifth year would have to be substantially less than that for the fourth year.

(e) An SEA shall not make a subgrant of Part C funds to a consortium of LEAs or to an LEA that contains more than one school district within its boundaries to disseminate information or provide technical assistance concerning educational practices unless those uses of Part C funds are consistent with the requirements of this section. For example, Part C funds may not be used by one LEA within a consortium to disseminate information or provide technical assistance concerning educational practices that LEA has developed or adopted with Part C funds to another member of the consortium unless the SEA determines that the requirements of paragraph (c) of this section are met.

(Sec. 431(a) of the Act; 20 U.S.C. 3111(a))

§ 774.58 Use of Part D funds—LEAs.

Subject to the requirements dealing with the participation of private school children, an LEA that receives a subgrant of Part D funds shall have complete discretion in selecting which of the Part D program purposes it wishes to support with those funds.

(Sec. 442 of the Act; 20 U.S.C. 3122)

§ 774.59 Allowable costs—Part B.

(a) Expenditures of Part B funds for instructional equipment may include the cost of raw or processed materials, or component parts to be made into finished products, as well as the cost of making or assembling the instructional equipment.

(b) No administrative costs, except those properly incurred by SEAs, are allowable under Part B of the Act unless the SEA approves a special indirect cost rate for use by LEAs.

(Secs. 401 and 421 of the Act; 20 U.S.C. 3081 and 3101)

Subpart G—Administrative Responsibilities of the State and Its Subgrantees

§ 774.60 Project application review and approval by the State.

(a) An SEA shall review and approve the project applications of LEAs:

(1) According to the requirements of section 503 of Title V of ESEA, if applicable;

(2) In a manner consistent with its assurances under 34 CFR 76.102(e) of EDGAR; and

(3) According to its State plan.

(b) The Department of Defense, the Department of the Interior, or an insular area shall review the project applications of its administrative units, if applicable. The relevant Department or the insular area may approve only those applications that comply with the requirements of the Act and these regulations, as well as with the Department's program plan or the insular area's State plan.

(Sec. 404(a) of the Act; 20 U.S.C. 3084(a))

§ 774.61 Monitoring and enforcement by the State.

In each fiscal year, the SEA shall carry out a plan for monitoring and enforcing compliance by LEAs with Federal requirements according to the following standards:

(a) The purpose of monitoring shall be—

(1) To review federally funded projects to determine whether a subgrantee is complying with applicable statutes, regulations, and grant provisions; and

(2) To review project purposes, activities, and results.

(b) An SEA shall—

(1) Take into account the size, scope, and purpose of the project in determining the frequency of on-site visits;

(2) Visit each multi-year Part C project at least once during the duration of the project or the applicable State plan; and

(3) Visit a sample of all Title IV projects annually to insure the integrity of the Title IV program.

(c) (1) Within 60 days of a monitoring visit, the SEA shall provide the LEA with a written report that contains the SEA's findings.

(2) If the LEA disagrees with those findings, it may reply in writing to the SEA within 60 days of the SEA's report.

(3) The SEA shall respond in writing to the LEA within 60 days of receiving the LEA's reply.

(d) All monitoring reports, replies, and responses are public documents and shall be made available to the public by both the SEA and LEA.

(Sec. 401 of the Act and Sec. 434 of GEPA; 20 U.S.C. 3081 and 1232c)

§ 774.62 Evaluation by the State.

An SEA shall comply with the evaluation requirements of Title V of ESEA (section 501(b)(4)) or of GEPA (section 435(b)(4)), whichever applies, and evaluate, at least once every three years, the effectiveness of Parts B, C, and D of the Title IV program in that State. The purposes of the evaluation are to determine—

(a) The extent to which educational needs identified in the State plan are being met by Parts B, C, and D;

(b) The quality and effectiveness of administrative activities undertaken by the SEA under its State plan, such as project application review, technical assistance, dissemination, and project monitoring; and

(c) For Part C projects—

(1) The extent to which the educational priorities identified in the State plan are being improved in participating LEAs;

(2) The extent to which LEAs are incorporating successful practices, originally supported by Part C funds, into their regular educational programs;

(3) The extent to which Part C funds are being used for the various program activities authorized under the Act; and

(4) The extent to which the educational needs that prompted the project are still viewed as important by the LEA when Federal funding concludes.

(Sec. 435(b)(4) of GEPA; 20 U.S.C. 3141(b)(4))

§ 774.63 Evaluation by the State advisory council.

At least every three years the SAC shall evaluate and report—through the SEA to the Secretary—on the Part B, C, and D programs in that State and on all Title IV projects in the State, including those conducted for children enrolled in nonprofit private elementary and secondary schools. These evaluations must reflect consideration of—

(a) The needs addressed by the Part B, C, and D programs and by the individual LEA projects;

(b) The objectives of the Part B, C, and D programs and of the individual LEA projects;

(c) The extent to which these objectives have been achieved;

(d) The educational improvements that have resulted from the Part B, C, and D programs and from the individual LEA projects; and

(e) In the case of a Part C project, the extent to which the educational practices associated with that project have been incorporated throughout the LEA.

(Secs. 401 and 401(b)(1) of the Act; 20 U.S.C. 3081 and 3084(b)(1))

§ 774.64 Standards for Part B.

A State shall adopt standards to be used by its LEAs—or, in case of an insular area, by its administrative units—in acquiring instructional equipment and materials under Part B of Title IV of the Act. The purpose of these standards shall be to insure that all equipment and materials acquired—

(a) Are of appropriate quality and quantity for instructional use in that LEA or administrative unit; and

(b) Will be used solely for instructional purposes.

(Sec. 421 of the Act; 20 U.S.C. 3101)

§ 774.65 Consultation procedures—Part B.

(a) In determining how Part B funds will be divided among the Part B program purposes, an SEA shall insure that a participating LEA has adopted appropriate procedures to coordinate the selection of instructional equipment and materials with the curricula carried out in that LEA's schools.

(b) These procedures shall include periodic consultation with teachers, librarians, media specialists, and other professional staff in the schools and with representatives of participating private school children. These consultations must take place before decisons are made on the expenditure of Part B funds.

(Sec. 422(b) of the Act; 20 U.S.C. 310(b))

§ 774.66 Control of instructional equipment and materials.

An LEA—or other public agency—that administers a Title IV project shall take whatever steps are necessary to insure that it maintains effective control over instructional equipment and materials acquired with Title IV funds.

(Sec. 406(c) of the Act and Sec. 436(b)(2) of GEPA; 20 U.S.C. 3086(c), 3101, and 1232e(b)(2))

§ 774.67 Audit resolution.

If an SEA administers Title IV under the authority of Part A of Title V of ESEA, the minimum standards for audit resolution contained in 34 CFR Part 209 apply.

(Sec. 509 of the Act; 20 U.S.C. 3149)

§ 774.68 Part C projects for the education of handicapped children; requirements under Part B of the Education of the Handicapped Act (EHA).

(a) An SEA shall ensure that each project for handicapped children that is funded with Title IV, Part C funds—

(1) Is under the general supervision of the persons in the SEA who are responsible for educational programs for handicapped children; and

(2) Meets the SEA's educational standards.

(b) An SEA shall ensure that all Title IV, Part C funds it awards for projects for handicapped children will be used only in a manner consistent with a goal of providing a free appropriate public education for all handicapped children. However, this paragraph does not limit the specific requirements of the Act or these regulations.

(c) Under the withholding provisions of EHA (section 616), the Secretary may withhold Part C funds available for projects for handicapped children if the Secretary determines that there has been a—

(1) Failure to comply substantially with any provision of sections 612 or 613 of EHA; or

(2) Failure in the administration of the State plan under Part B of EHA to comply with—

(i) Any provision of Part B of EHA; or

(ii) Any requirement in the approved application under Part B of an LEA or intermediate educational unit.

(d) The regulations for Part B of EHA are in 34 CFR Part 300.

(Secs. 612(6), 613(a)(2), and 616(a)(2)(B) of EHA; 20 U.S.C. 1412(6), 1413(a)(2) and 1416(a)(2)(B))

Subpart H—Participation of Children Enrolled in Private Schools

§ 774.70 Responsibilities.

(a) *General.* Section 406 of the Act provides that children enrolled in private schools are entitled to participate equitably in the purposes and benefits of the Title IV program. This subpart establishes the rules governing their participation. For the purposes of this subpart and Subpart I the term LEA includes an administrative unit of an insular area.

(b) *SEA responsibilities.* An SEA may not make a subgrant of Title IV funds that does not meet the requirements dealing with the participation of private school children. An SEA shall ensure that each LEA complies with these requirements. If an SEA carries out a Title IV project under § 774.73(d) or § 774.82(a), it shall comply with these requirements as if it were an LEA.

(c) *LEA responsibilities.* (1) An LEA shall provide children enrolled in the private schools within its boundaries genuine opportunities to participate equitably in Title IV projects. These opportunities shall be consistent with the number and needs of those children.

(2) The LEA shall maintain continuing administrative direction and control over the Title IV funds and property that benefit children enrolled in private schools.

(Sec. 406 of the Act; 20 U.S.C. 3086)

§ 774.71 Consultation with representatives of private school students.

(a) An LEA shall consult with appropriate representatives of the children enrolled in the private schools within its boundaries during all phases of the development and design of the project covered by the application, including consideration of—

(1) Which children will receive benefits under the program;

(2) How the children's needs will be identified;

(3) What benefits will be provided;

(4) How the benefits will be provided; and

(5) How the project will be evaluated.

(b) An LEA shall consult with appropriate representatives of children enrolled in private schools before the LEA makes any decision that affects the opportunities of those children to participate in the project.

(c) The LEA shall give the appropriate representatives a genuine opportunity to express their views regarding each matter subject to the consultation requirements in this section.

(Sec. 406(a) of the Act; 20 U.S.C. 3086(a))

§ 774.72 Needs; number of children; types of services.

An LEA shall determine the following matters on a basis comparable to the one it uses in providing for the participation of children attending public schools:

(a) The needs of children enrolled in the private schools.

(b) The number of those children who will participate in a project.

(c) The benefits the LEA will provide to those children.

(Sec. 406 of the Act; 20 U.S.C. 3086)

§ 774.73 Benefits.

(a) *General.* An LEA that receives a subgrant of Title IV funds shall provide to children enrolled in private schools located within its boundaries secular, neutral, non-ideological benefits that are authorized by Title IV, other than projects for improving school management.

(1) If the LEA determines that it is either unnecessary or not feasible to provide these benefits on the premises of one or more of those private schools, it shall make other arrangements for their provision to those children.

(2) These other arrangements must allow the private school children to participate equitably in the LEA's project.

(b) *Same benefits.* If an LEA concentrates Title IV funds on a particular group, attendance area, or grade or age level, the LEA shall ensure equitable participation by children enrolled in private schools who—

(1) Have the same needs; and

(2) Are in that group, attendance area, or age or grade level.

(c) *Different benefits.* An LEA shall provide Title IV benefits to children enrolled in private schools that are different from the Title IV benefits it provides to children enrolled in public schools if the differences are necessary to meet the needs of the children enrolled in private schools. However, the Title IV benefits for the children enrolled in private schools must be comparable in quality, scope, and opportunity for participation to those provided for children enrolled in public schools.

(d) *Part B benefits.* (1) If no project under Part B of Title IV is carried out for the benefit of children enrolled in public schools within the school district of an LEA, the SEA shall make appropriate arrangements to provide benefits authorized by Part B to the children enrolled in private schools.

(2) These arrangements—which may include contracts with nonprofit private agencies or organizations—must provide Part B benefits to these children as if they were provided by the LEA within whose district the private schools are located.

(e) *Part C and Part D benefits.* Children enrolled in private schools located within the boundaries of an LEA may receive benefits authorized by Part C or D of Title IV only if:

(1) That LEA applied for and received a subgrant; and

(2) Children enrolled in the public schools within the boundaries of that LEA receive, respectively, Part C or D benefits.

(Sec. 406(a) of the Act; 20 U.S.C. 3086(a))

§ 774.74 Expenditures.

(a) Subject to paragraph (b) of this section, an LEA shall spend the same average amount of Title IV funds on a child enrolled in a private school who participates in the Title IV project as a child enrolled in a public school who participates in the project.

(b) The LEA shall spend a different average amount of Title IV funds for a child enrolled in a private school if the costs of meeting the needs of children enrolled in private schools are different from the costs of meeting the needs of children enrolled in the public schools.

(Sec. 406(b) of the Act; 20 U.S.C. 3086(b))

§ 774.75 Separate classes.

An LEA may not use Title IV funds for classes that are organized separately on the basis of school enrollment or the religion of the children if—

(a) The classes are at the same site; and

(b) The classes include children enrolled in public schools and children enrolled in private schools.

(Sec. 406(a) of the Act; 20 U.S.C. 3086(a))

§ 774.76 Funds not to benefit a private school.

(a) An LEA may not use Title IV funds to finance the existing level of instruction in a private school or to otherwise benefit the private school.

(b) The LEA shall use Title IV funds to meet the specific educational needs of children enrolled in private schools rather than—

(1) The needs of a private school, or

(2) The general needs of the children enrolled in a private school.

(Sec. 406(a) of the Act; 20 U.S.C. 3086(a))

§ 774.77 Administrative control.

(a) An LEA may place the materials or equipment acquired with Title IV funds on the premises of a private school for the period of time needed for the purpose of the project.

(b) An LEA shall insure that the materials or equipment placed on the premises of a private school—

(1) Are used only for the purposes of the Title IV program; and

(2) Can be removed from the private school without remodeling its facilities.

(c) An LEA shall remove the materials or equipment from the premises of a private school if—

(1) The materials or equipment are no longer needed for the purposes of the program or

(2) Removal is necessary to avoid use of the materials or equipment for other than Title IV purposes.

(Sec. 406(c)(1) of the Act; 20 U.S.C. 3086(c)(1))

§ 774.78 Public employees.

An LEA may use Part C or D funds to employ personnel to provide services to children enrolled in a private school only—

(a) If the personnel are public employees;

(b) If the services these persons provide are not normally provided by the private school; and

(c) To the extent necessary to provide equitable Part C or D benefits designed for children enrolled in private schools.

(Sec. 406(c)(2) of the Act; 20 U.S.C. 3086(c)(2))

§ 774.79 Separate compliance.

(a) Each SEA and LEA that participates in Title IV shall comply with the requirements of this subpart in connection with each Title IV program—Part B, C, or D—in which it participates.

(b) A determination that an SEA or LEA is not complying with the requirements of this subpart in one part of Title IV has no bearing on whether it is complying with those requirements in connection with another part.

(Sec. 406 of the Act; 20 U.S.C. 3086)

Subpart I—Section 406 Compliance Procedures

§ 774.80 Complaint procedures.

(a) Any person or organization may file with an SEA a written complaint alleging that in one or more Title IV projects children enrolled in private schools are not receiving benefits on an equitable basis. The written complaint must include a detailed statement of the facts upon which the allegation is made.

(b) The SEA shall, within 60 days of its receipt, investigate the complaint and submit to the Secretary a report stating the nature of the complaint and the actions taken to resolve it. If the SEA believes that one or more LEAs have substantially failed, or are unwilling to provide equitably for children enrolled in private schools, it shall comply with § 774.81(b).

(c) If, after the 60 day period, the SEA, an affected LEA, the person or organization making the complaint, or the Secretary believes the complaint has not been satisfactorily resolved, the Secretary may review the matter and take appropriate action. The Secretary determines when a complaint is finally resolved.

(Sec. 406 of the Act; 20 U.S.C. 3086)

§ 774.81 Waiver of section 406.

(a) The Secretary waives the requirements of Subpart H if the Secretary determines that an SEA is prohibited by State law from providing for the equitable participation of children enrolled in private schools. If an SEA believes that it is prohibited by State law from providing equitably for private school children, it shall promptly—

(1) Notify the Secretary of its belief;

(2) Provide the Secretary with a written interpretation of State law prepared by the State Attorney General or other appropriate State legal officer;

(3) Certify in its State plan—by amendment, if necessary—that it cannot, under State law, comply with the requirements of section 406 of the Act; and

(4) Refrain from approving any project application until the Secretary either—

(i) Waives the requirements of Subpart H for that State; or

(ii) Determines that, despite the provisions of State law, the SEA is able to comply with the requirements of section 406 of the Act.

(b) The Secretary may waive the requirements of Subpart H if the Secretary determines that an SEA or LEA has either substantially failed or is unwilling to provide for the equitable participation of children enrolled in private schools. If, at any time, an SEA believes that an LEA has substantially failed, or is unwilling, to provide equitably for private school children, the SEA shall promptly—

(1) Notify both the Secretary and the affected LEA of its belief;

(2) Provide both with a written, detailed statement of the reasons for its belief; and

(3) Notify the affected LEA that it will not make additional subgrants to the LEA or approve project applications submitted by the LEA until the Secretary either—

(i) Waives the requirements of Subpart H for the affected LEA; or

(ii) Determines that the affected LEA is in compliance with the requirements of section 406 of the Act.

(c) A waiver under this section lasts until the Secretary determines that there is no longer any failure or inability on the part of the SEA or affected LEA to comply with the requirements of Subpart H.

(Secs. 406(d), 406(e), and 406(f) of the Act; 20 U.S.C. 3086(d), 3086(e), and 3086(f))

§ 774.82 By-pass.

(a) If the Secretary waives the requirements of section 406 for a State or one or more of its LEAs, the Secretary arranges for the equitable provision of Title IV benefits to the affected private school children. However, if the Secretary—

(1) Waives the requirements of Subpart H for one or more LEAs; and

(2) (i) Determines that the affected SEA is not, under State law, prohibited from complying with the requirements of section 406, the Secretary may offer the SEA the opportunity to make an arrangement, either directly or by contract, for the equitable provision of Title IV benefits to the affected private school children.

(ii) The SEA shall promptly notify the Secretary if it intends to make these arrangements.

(b) Pending the final resolution of a complaint or the results of any investigation which may lead to a waiver of the requirements of section 406 under § 774.81, the Secretary may withhold from the allocation of the affected State or LEA the amount needed to pay the cost of an arrangement under paragraph (a) of this section.

(c) If, after consultation with the appropriate representatives of the public and private school children—

(1) The Secretary makes an arrangement under paragraph (a) of this section, the Secretary pays the cost of that arrangement—including necessary administrative expenses—from the appropriate Title IV allotment of the affected State; or

(2) An SEA makes an arrangement under paragraph (a) of this section, the SEA shall pay the cost of that arrangement from the appropriate Title IV allotment of the affected LEA. If that arrangement requires the SEA to perform administrative activities it would not otherwise perform, it may pay the cost of those additional activities from the appropriate allotment of that LEA.

(Secs. 406(d), 406(e), and 406(g) of the Act; 20 U.S.C. 3086(d), 3086(e), and 3086(g))

Subpart J—Other Compliance Procedures Used by the Department

§ 774.90 Waivers of maintenance of effort.

Because of exceptional and unforeseen circumstances affecting one or more LEAs in a State, the Secretary may waive the maintenance of effort requirements in § 774.12, if it is equitable to do so. This waiver is effective for one fiscal year only, and may not be repeated.

(a) Examples of exceptional and unforeseen circumstances include—

(1) An unforeseen, substantial removal of property from the tax roll due to—

(i) A disaster of human or natural causes;

(ii) A government action; or

(iii) The departure of an industrial or commercial facility.

(2) An unforeseen, substantial diversion of available revenue to other purposes outside the control of the SEA or LEA due to emergency circumstances such as those resulting from a disaster of human or natural causes.

(3) An unforeseen, substantial decrease in expenditures by a State or LEA due to a strike of educational or service personnel;

(4) An unforeseen, substantial decrease in expenditures by a State or LEA due to energy shortages or other emergency circumstances;

(5) An extraordinary State or local appropriation to meet an unexpectedly acute educational need.

(b) Examples of circumstances the Secretary does not consider to be exceptional and unforeseen include—

(1) A deliberate substantial reduction of available revenue due to an act of a State or local legislature or electorate in other than emergency circumstances; and

(2) The failure of an SEA or LEA to maintain its fiscal effort when it had the financial resources available to do so.

(c) In determining whether it is equitable to grant a waiver under paragraph (a) of this section, the Secretary considers—

(1) The extent to which the circumstances claimed to be exceptional and unforeseen were of the SEA's or LEA's own making;

(2) The extent to which the SEA or LEA attempted to maintain its expenditures for programs described in Parts B and D and the Strengthening SEA Management program despite those circumstances; and

(3) Any other relevant factors.

(Sec. 431A of GEPA and H. Rept. 95-1137, 95th Congress, 2d Sess., at 139; 20 U.S.C. 1232-1)

§ 774.91 Maintenance of effort waiver procedures.

If a State discovers that it cannot comply with the assurance in its State plan to maintain expenditures, it shall—

(a) Promptly notify the Secretary and request a waiver for the appropriate fiscal year; and

(b) Amend its State plan to reflect the request for a waiver.

(Sec. 404(a)(7) of the Act; 20 U.S.C. 3084(a)(7))

§ 774.92 Effect of waiver of maintenance of effort.

(a) If the Secretary grants a waiver of maintenance of effort under § 774.90, the Secretary reduces the total amount a State may receive for that fiscal year by the exact proportion its expenditures for the preceding fiscal year fell short of its expenditures for the second preceding fiscal year. Those expenditures may be calculated on either an aggregate or aggregate per student basis.

(b) Subsequent determinations of whether that State has maintained its effort are made on the basis of the expenditures that would have been required had the Secretary not granted a waiver.

(Sec. 431A(b) of GEPA; 20 U.S.C. 1232-1(b))

PART 776—LIBRARY CAREER TRAINING PROGRAM

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SOURCE: 47 FR 9788, Mar. 5, 1982, unless otherwise noted.

Subpart A—General

§ 776.1 The Library Career Training Program.

The Secretary awards grants and contracts for the purpose of—

(a) Training persons in librarianship through fellowships, institutes, or traineeships.

(b) Establishing, developing, and expanding programs of library and information science, including new techniques of information transfer and communication technology.

(Sec. 201 and 222 of the Act, 20 U.S.C. 1021, 1032)

§ 776.2 Eligible parties.

Eligible applicants are—

(a) An institution of higher education.

(b) A library organization or agency.

(Sec. 222 of the Act, 20 U.S.C. 1032)

§ 776.3 Regulations that apply to this program.

(a) The following regulations apply to grants under the Library Career Training Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of grants), 34 CFR Part 75 (Direct Grant Programs), and 34 CFR Part 77 (Definitions); and

(2) The regulations in this Part 776.

(b) A different set of regulations apply to contracts made under this program. (See EDGAR, 34 CFR 75.4 Education Department contracts).

(20 U.S.C. 3474)

§ 776.4 Definitions that apply to this program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Parts 74 and 77:

Applicant
Application
Award
Contract (includes definition of Subcontract)
Department
EDGAR
Grant
Grantee
Private
Project
Project period
Public
Secretary

(b) *Other definitions.* The following additional definitions apply to this part:

"Act" means the Higher Education Act of 1965, as amended.

"Dependent" means any individual as described in paragraphs (1), (2), or (3) below who will receive more than half of his or her support from a project participant during the course of a project conducted under this program:

(1) Any individual related by blood or marriage to the participant;

(2) Any legally adopted child or a child placed for adoption in the participant's home by a licensed child-placing agency, and

(3) Any other individual living in the participant's household, provided the

relationship of the two individuals is not illegal.

"Fellowship" means an award to an individual who has been accepted for admission to an institution of higher education and who is or will be enrolled full-time in a graduate or undergraduate program of library and information science. The purpose of the award is to assist recipients financially as they work toward or complete the requirements for a specific degree in some aspect of librarianship.

"Institute" means a specialized group training project in librarianship that:

(1) Is separate from the regular academic program of the applicant;

(2) Has an innovative curriculum;

(3) May or may not provide academic credit;

(4) Either provides persons with the skills needed to enter the library and information science field or provides library and information science personnel—including library educators—an opportunity to strengthen or increase their competencies; and

(5) May be long term or short term.

"Institution of higher education" means the type of institution defined by section 1201 of the Act.

"Librarianship" means the principles and practices of library and information science, including the acquisition, organization, storage, retrieval, and dissemination of information, and reference and research use of library and other information resources.

"Library organization or agency" means a public or private organization or agency that provides library services or programs.

"Participants" means a person who is enrolled in a training project funded under this part.

"State agency" means the state agency designated under section 1203 of the Act.

"Traineeship" means a training project in librarianship that:

(1) Is separate from the regular academic program of the applicant;

(2) Is designed to meet the individual needs of mid-level library and information science professionals;

(3) Provides individualized instruction, usually through an internship; and

(4) May include academic instruction.

"Underrepresented groups" means groups of persons who have been traditionally underrepresented either at the highest levels or at other levels of the library and information science profession. Depending upon the level, these groups include racial and ethnic minorities, economically disadvantaged persons, handicapped persons, and women.

"Underserved groups" means groups of persons who have been traditionally underserved by the library and information science profession, such as racial and ethnic minorities, economically disadvantaged persons, handicapped persons, and rural populations.

(Secs. 201 and 222 of the Act, 20 U.S.C. 1021, 1032, 3474)

Subpart B—Kinds of Projects for Which Grants Are Made

§ 776.10 Types of projects.

A grantee may conduct one or more fellowship projects, institute projects, and traineeship projects.

(Secs. 201 and 222 of the Act, 20 U.S.C. 1021, 1032)

§ 776.11 Program objectives.

The Secretary encourages applicants to design projects that will accomplish one or more of the following objectives—

(a) Increase opportunities for members of underrepresented groups to obtain training in librarianship.

(b) Increase opportunities for professional advancement for members of underrepresented groups by providing training beyond the master's degree level.

(c) Train or retrain library personnel to serve the interests of traditionally underserved groups.

(d) Train or retrain library personnel in new techniques of—

(1) Information acquisition, transfer, and communication technology; and

(2) Planning, evaluation, and dissemination.

(Sec. 222 of the Act, 20 U.S.C. 1032, 3474)

§ 776.12 Project duration.

(a) A fellowship or long-term institute project must provide at least one academic year but not more than 12 months of training.

(b) A short-term institute project must provide at least one week but usually not more than six weeks of training.

(c) A traineeship project may not exceed 12 months.

(Sec. 222 of the Act, 20 U.S.C. 1032, 3474)

Subpart C—How To Apply for a Grant

§ 776.20 Application instructions.

(a) An applicant may submit applications for fellowship, institute, and traineeship projects.

(b) An applicant may request any number of fellowships at any number of degree levels in a single application.

(c) An applicant shall specify the amount to be paid to participants as stipends. (See §§ 776.41-776.43.)

(d) An applicant shall estimate the amount needed for travel and dependency allowances. (See §§ 776.44-776.45.)

(Sec. 222 of the Act, 20 U.S.C. 1032, 3474)

Subpart D—How the Secretary Makes a Grant

§ 776.30 How the Secretary evaluates applications.

(a) The Secretary evaluates an application for a fellowship project on the basis of the criteria in § 776.31 and awards up to 100 possible points for these criteria.

(b) The Secretary evaluates an application for an institute project on the basis of the criteria in § 776.32 and awards up to 100 possible points for these criteria.

(c) The Secretary evaluates an application for a traineeship project on the basis of the criteria in § 776.33 and awards up to 100 possible points for these criteria.

(d) The maximum score for each criterion is indicated in parentheses.

(Sec. 222 of the Act, 20 U.S.C. 1032, 3474)

§ 776.31 Selection criteria for fellowship applications.

(a) *Project description.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the applicant's project.

(2) The Secretary looks for information that shows—

(i) The project objectives are clearly stated, realistic, and satisfy a current training need;

(ii) The required courses meet standards that are recognized by the library and information science profession; and

(iii) The extent to which the student field experience component (if included) is well designed.

(b) *Plan of operation.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment of eligible project participants who are members of groups that have been traditionally underrepresented, such as—members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(c) *Quality of key personnel.* (7 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Participant selection.* (15 points)

(1) The Secretary reviews each application for information that shows the method of participant selection.

(2) The Secretary looks for information that shows—

(i) The participants will be selected in conformance with program objectives (see § 776.11); and

(ii) The applicant's admissions standards for participants are as high as they are for other students in the library education program.

(e) *Applicant characteristics.* (20 points)

(1) The Secretary reviews each application for information that shows the applicant's commitment to library and information science education.

(2) The Secretary looks for information that shows—

(i) The applicant's catalog adequately describes the library education program in which participants will be enrolled;

(ii) The amount the applicant spends per student for education in librarianship is comparable to that of other library education programs with a similar student enrollment and curriculum;

(iii) The ratio of degrees awarded to enrollment in the applicant's library education program is comparable to that of other library education programs;

(iv) The ratio of requested fellowships to other fellowships and scholarships in librarianship supported by the applicant is comparable to that of other library education programs; and

(v) The academic level of the project is appropriate to the applicant's capabilities or experience.

(f) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(g) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

CROSS REFERENCE: See EDGAR 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(h) *Adequacy of resources.* (3 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(i) *Conformance with program objectives.* (20 points)

The Secretary reviews each application for information that shows the project will achieve one or more of the following program objectives:

(1) Increase opportunities for members of underrepresented groups to obtain training in librarianship;

(2) Increase opportunities for professional advancement for members of underrepresented groups by providing training beyond the master's degree level;

(3) Train or retrain library personnel to serve the interests of traditionally underserved groups; and

(4) Train or retrain library personnel in the new techniques of—

(i) Information acquisition, transfer, and communication technology; or

(ii) Planning, evaluation, and dissemination.

(Sec. 222 of the Act, 20 U.S.C. 1032, 3474)

§ 776.32 Selection criteria for institute applications.

(a) *Project description.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the applicant's project.

(2) The Secretary looks for information that shows—

(i) The subject matter of the project is significant, of current interest to the library and information science community, well described, appropriate for an institute, and is not duplicated in the applicant's regular academic curriculum;

(ii) The project duration is appropriate for presenting the subject matter;

(iii) The project content satisfies educational standards of the library and information science profession;

(iv) The blend of theoretical and practical training is suitable to the subject matter and the needs of the participants; and

(v) The training methods are innovative and imaginative.

(b) *Plan of operation.* (12 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(c) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraph (2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Participant selection.* (10 points)

(1) The Secretary reviews each application for information that shows the method of participant selection.

(2) The Secretary looks for information that shows—

(i) Participants will be selected according to their experience, current responsibilities, and training needs; and

(ii) The number or participants is appropriate to the training methods and project resources.

(e) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (8 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

CROSS REFERENCE: See EDGAR, 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(g) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(h) *Conformance with program objectives.* (20 points)

The Secretary reviews each application for information that shows the project will achieve one or more of the following program objectives:

(1) Increase opportunities for members of underrepresented groups to obtain training in librarianship;

(2) Increase opportunities for professional advancement for members of underrepresented groups by providing training beyond the master's degree levels;

(3) Train or retrain library personnel to serve the interests of traditionally underserved groups; and

(4) Train or retrain library personnel in the new techniques of—

(i) Information acquisition, transfer, and communication technology; or

(ii) Planning, evaluation, and dissemination.

(i) *Project effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows the effectiveness of the project.

(2) The Secretary looks for information that shows—

(i) The project will increase the number of librarians with specialized skills;

(ii) The project includes plans for how innovative results and materials could be disseminated to other institutions or agencies; and

(iii) The likelihood that project results and materials will be replicated.

(Sec. 222 of the Act, 20 U.S.C. 1032, 3474)

§ 776.33 Selection criteria for traineeship applications.

(a) *Project description.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the applicant's project.

(2) The Secretary looks for information that shows—

(i) The training needs to be met by the project are significant, of current interest to the library and information science community, and well described;

(ii) The extent to which project activities are designed to meet the individual needs of each participant; and

(iii) The extent to which other library agencies or institutions will cooperate with the applicant in providing appropriate and high quality internship opportunities.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(c) *Quality of key personnel.* (7 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented such as—members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Participant selection.* (15 points)

(1) The Secretary reviews each application for information that shows the method of participant selection.

(2) The Secretary looks for information that shows—

(i) Participants will be selected on the basis of their stated career goals and on their potential for high level advancement and continued professional growth within the field of library and information science; and

(ii) There are more internship opportunities available than the proposed number of participants.

(e) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

CROSS REFERENCE: See EDGAR 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(g) *Adequacy of resources.* (3 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(h) *Conformance with program objectives.* (25 points)

The Secretary reviews each application for information that shows the project will achieve one or more of the following program objectives:

(1) Increase opportunities for professional advancement for members of underrepresented groups;

(2) Train or retrain library personnel to serve the interests of traditionally underserved groups; and

(3) Train or retrain library personnel in the new techniques of—

(i) Information acquisition, transfer, and communication technology; or

(ii) Planning, evaluation, and dissemination.

(Sec. 222 of the Act, 20 U.S.C. 1032, 3474)

§ 776.34 Distribution of funds.

In any fiscal year the Secretary may specify in an application notice—

(a) How funds will be divided among fellowship, institute, and traineeship grants.

(b) Whether funds will be reserved for fellowship awards at particular academic levels.

(c) Whether applications for fellowship grants will be evaluated independently according to particular academic levels.

(Sec. 222 of the Act, 20 U.S.C. 1032, 3474)

Subpart E—Conditions That Must Be Met by a Grantee

§ 776.40 Allowable costs.

(a) Allowable costs under this part are those specified in §§ 776.41-776.45.

(b) Fiscal limitations are set forth in § 776.46.

(Sec. 222 of the Act, 20 U.S.C. 1032, 3474)

§ 776.41 Fellowship project costs.

(a) The grantee may use grant funds in the following amounts to cover the cost of providing fellowship training:

(1) For each fellowship awarded at the undergraduate level—$1500 for an academic year plus $250 for a summer session;

(2) For each fellowship awarded at the master's level—$3500 for an academic year plus $500 for a summer session; and

(3) For each fellowship awarded at the post-master's and doctoral level—$5200 for an academic year plus $800 for a summer session.

(b) The grantee shall use grant funds to pay stipends to fellowship participants in the following amounts:

(1) Undergraduate level—$1500 for an academic year plus $250 for a summer session.

(2) Master's level—$3500 for an academic year plus $500 for a summer session; and

(3) Post-master's and doctoral level—$5200 for an academic year plus $800 for a summer session.

(Sec. 222 of the Act, 20 U.S.C. 1032, 3474)

§ 776.42 Institute project costs.

(a) The grantee shall use grant funds to provide institute training in accordance with 34 CFR Part 74, Subpart Q.

(b) The grantee may use grant funds to pay stipends to institute participants. If the grantee pays stipends it shall do so in the following amounts:

(1) Long-term, full-time, post-baccalaureate level—$3500 for an academic year plus $500 for a summer session;

(2) Long-term, full-time, pre-baccalaureate level—$1500 for an academic year plus $250 for a summer session;

(3) Short-term, full-time—$100 per week; and

(4) Part-time—$20 per day.

(Sec. 222 of the Act, 20 U.S.C. 1032)

§ 776.43 Traineeship project costs.

(a) The grantee shall use grant funds to provide traineeship training in accordance with either § 776.41(a) or § 776.42(a), as the grantee elects in its application.

(b) The grantee may use grant funds to pay stipends to traineeship participants. If the grantee pays stipends it shall do so in accordance with either § 776.41(b) or § 776.42(b), as the grantee elects in its application.

(Sec. 222 of the Act, 20 U.S.C. 1032)

§ 776.44 Travel allowances.

(a) The Secretary may authorize travel allowances for participants—

(1) In cases of extreme hardship; and

(2) If travel is necessary for successful participation in the project.

(b) The mileage rate must be consistent with current Federal travel regulations.

(c) The Secretary may defer authorization of travel allowances until the grantee has documented need.

(Sec. 222 of the Act, 20 U.S.C. 1032)

§ 776.45 Allowances for dependents.

(a) In cases of extreme hardship, the Secretary may authorize allowances for dependents of participants. The maximum amount that may be provided per dependent is $450 for an academic year, $100 for a summer session, and $10 per week for short-term projects.

(b) The Secretary may defer authorization of allowances for dependents until the grantee has documented need.

(Sec. 222 of the Act, 20 U.S.C. 1032)

§ 776.46 Tuition and fees.

A grantee shall not charge tuition or fees to a participant in a training project funded under this part.

(Sec. 222 of the Act, 20 U.S.C. 1032)

§ 776.47 Notification of the State agency.

Each institution of higher education that receives a grant under this part shall annually inform the State agency designated under section 1203 of the Act of its project activities.

(Sec. 202 of the Act, 20 U.S.C. 1022)

Subpart F—The Administrative Responsibilities of a Grantee

§ 776.50 Participant eligibility and selection.

(a) A grantee selects project participants on the basis of its own published criteria.

(b) Participants must be—

(1) Nationals of the United States, or be in the United States for other than a temporary purpose and intend to become permanent residents of the United States; and

(2) Engaged in, or preparing to engage in, a profession or other occupation involving library or information science.

(Sec. 222 of the Act, 20 U.S.C. 1032, 3474)

§ 776.51 Substitutions.

The grantees may replace a participant provided the new participant can successfully complete the training project at no additional cost to the Government. The grantee shall notify the Department of Education in writing within 30 days of the withdrawal or substitution of a participant.

(Sec. 222 of the Act, 20 U.S.C. 1032, 3474)

§ 776.52 Payments to participants.

(a) The grant award specifies the amount of money for stipends and for dependency and travel allowances the grantee will receive.

(b) The grantee disburses the stipends, and dependency and travel allowances to the appropriate project participants.

(Sec. 22 of the Act, 20 U.S.C. 1032)

§ 776.53 Payment adjustments.

(a) When a participant withdraws from a training project, the stipend and any allowances the participant received must be prorated according to the number of weeks completed in the training period. When a substitution is not made, the unused portion is returned to the Federal Government.

(b) The date of withdrawal is the participant's last day of class attendance or the date the grantee determines that the participant has ceased to maintain academic proficiency. Attendance in any part of a week is counted as a full week.

(Sec. 222 of the Act, 20 U.S.C. 1032)

§ 776.54 Assistance under other Federal programs.

(a) Any amount paid a participant from any other Federal grant program for educational purposes (except veterans', war orphans'. and widows' educational assistance under Title 38, United States Code) must be deducted from the amount the participant would receive under this part.

(b) A participant may apply for and receive a Federal educational loan. The amount of the loan and any interest paid may not be deducted from the amount receivable by the participant under this part.

(Sec. 222 of the Act, 20 U.S.C. 1032, 3474, and 38 U.S.C. 1700, *et seq.*)

PART 777—LIBRARY RESEARCH AND DEMONSTRATION PROGRAM

Subpart A—General

Sec.
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777.40 Coordination with other groups.

Authority: Part B of Title II of the Higher Education Act of 1965, as amended by the Education Amendments of 1980 (Pub. L. 96-374), 94 Stat. 1383 (20 U.S.C. 1021 *et seq.*), unless otherwise noted.

Source: 46 FR 37484, July 20, 1981, unless otherwise noted.

Subpart A—General

§ 777.1 The Library Research and Demonstration Program.

The Library Research and Demonstration Program encourages research, development, and demonstration activities relating to—

(a) The improvement of libraries, including—

(1) The promotion of economical and efficient delivery of information;

(2) Cooperative efforts; and

(3) Developmental projects.

(b) The improvement of information technology.

(c) Training in librarianship.

(d) The dissemination of information derived from these projects.

(Secs. 201, 223 of the Act; 20 U.S.C. 1021, 1033)

§ 777.2 Eligible parties.

An application for assistance under this program may be submitted by—

(a) An institution of higher education.

(b) A public or private agency, institution, or organization.

(Sec. 223 of the Act; 20 U.S.C. 1033)

§ 777.3 Regulations that apply to this program.

The following regulations apply to grants under the Library Research and Demonstration Program:

(a) The Education Department General Administration Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (Definitions).

(b) A different set of regulations apply to contracts made under this program. (See EDGAR, 34 CFR 75.4 Education Department contracts).

(20 U.S.C. 3474)

§ 777.4 Definitions that apply to this program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Award
Budget
Department
EDGAR
Equipment
Facilities
Grant
Grantee
Private
Project
Public
Secretary
Supplies

(b) *Definitions that apply to this part.* The following definitions apply to this part:

"Act" means the Higher Education Act of 1965, as amended.

"Institution of higher education" means the type of institution defined by Section 1201 of the Act.

"Librarianship" means the principles and practices of the library and information science, including the acquisition, organization, storage, retrieval and dissemination of information, and reference and research use of library and other information resources.

(20 U.S.C. 1141; 3474)

Subpart B—Kinds of Projects the Secretary Assists Under This Program

§ 777.10 Authorized activities.

(a) The Secretary may award a grant for a project that supports research, development, demonstration, or any combination of these, related to—

(1) The improvement of libraries through —

(i) The promotion of economical and efficient delivery of information;

(ii) Cooperative efforts; and

(iii) Developmental projects;

(2) Training in librarianship;

(3) Information technology; and

(4) The dissemination of information derived from a project funded under this program.

(b) A project that includes any one or more of the activities described in § 777.10(a) may be supported under this program.

(Sections 201, 223 of the Act; 20 U.S.C. 1021, 1033)

Subpart C—How To Apply for a Grant

§ 777.20 Application requirements.

An applicant shall demonstrate, in its application, that the project meets the requirements of the Act and all applicable regulations.

(Section 223 of the Act; 20 U.S.C. 1033)

Subpart D—How the Secretary Makes a Grant

§ 777.30 How the Secretary judges applications.

(a) The Secretary evaluates an application on the basis of the criteria in § 777.31 and awards up to 100 points for these criteria.

(b) The maximum possible score for each criterion is indicated in parentheses next to the heading of that criterion.

(20 U.S.C. 3474)

§ 777.31 Selection criteria for evaluating applications.

(a) *Plan of operation.* (25 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (b)(2)(ii) will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows

the quality of the evaluation plan for the project. Cross-reference.—See 34 CFR 75.590 Evaluation by the grantee.

(2) the Secretary looks for information that shows methods of evaluation that are appropriate for the project, and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Significance of proposed project.* (30 points)

The Secretary reviews each application for information that shows the extent to which—

(1) The proposed research, development, or demonstration (or any combination) activities—

(i) Address an important library or information problem;

(ii) Are likely to improve operations or service in a significant number of libraries; or

(iii) Are likely to fulfill unmet informational, educational, or cultural needs related to libraries and information science.

(2) The applicant demonstrates an understanding of the nature and magnitude of the needs to be addressed, as well as the success or failure of related research, development, or demonstration activity.

(g) *Dissemination and continuation.* (5 points)

The Secretary reviews each application for information that shows that—

(1) The results of the project will be adequately disseminated or replicated; and

(2) To the extent possible, the project results will be implemented or continued after the termination of Federal funding.

(20 U.S.C. 1033; 3474)

Subpart E—Conditions That Must Be Met by a Grantee

§ 777.40 Coordination with other groups.

An institution of higher education that receives a grant under this part shall annually inform the State agency, designated under Section 1203 of the Act, of its project activities.

(Section 202 of the Act; 20 U.S.C. 1022)

PART 778—STRENGTHENING RESEARCH LIBRARY RESOURCES PROGRAM

Sec.

778.1 Scope.
778.2 Regulations that apply to the Strengthening Research Library Resources Program.
778.3 Purpose.
778.4 Definitions.
778.5 Eligibility for assistance.
778.6 Applications.
778.7 Selection criteria.
778.8 Regional balance.
778.9 Authorized activities.
778.10 Consultation with State agency.

Authority: Part C of Title II of the Higher Education Act of 1965, as amended by the Education Amendments of 1980 (Pub. L. 96-374), 94 Stat. 1383 (20 U.S.C. 1021).

Source: 45 FR 85430, Dec. 24, 1980, unless otherwise noted.

§ 778.1 Scope.

This part applies to the award of grants under Part C of Title II of the Higher Education Act of 1965, as amended by section 201 of the Education Amendments of 1980.

(Sec. 231 of the Act; 20 U.S.C. 1041)

§ 778.2 Regulations that apply to the Strengthening Research Library Resources Program.

(a) *Regulations.* The following regulations apply to the Strengthening Research Library Resources Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and Part 77 (Definitions).

(2) The regulations in this Part 778.

(20 U.S.C. 3474)

§ 778.3 Purpose.

The purpose of the program under this part is to promote research and education of higher quality throughout the United States by providing financial assistance to help the Nation's major research libraries—

(a) Maintain and strengthen their collections; and

(b) Make their holdings available to other libraries whose users have need for research materials.

(Sec. 201 of the Act; 20 U.S.C. 1021)

§ 778.4 Definitions.

(a) Definitions in EDGAR. The following terms used in this part are defined in 34 CFR Part 77:

Acquisition, Applicant, Application, Department, Fiscal Year, Grant, Nonprofit, Private, Project, Public, Secretary, and State.

(b) Definitions that apply to this part. The following definitions apply to this part:

"Act" means the Higher Education Act of 1965, as amended by section 201 of the Education Amendments of 1980.

"Branch campus" means a campus of an institution of higher education located in a community of the United States different from that of the parent institution, not within a reasonable commuting distance from the main campus, and which has college level programs for which library facilities, services, and materials are necessary.

"Institution of higher education" means an educational institution in any State which (1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, (2) is legally authorized within such State to provide a program of education beyond secondary education, (3) provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree, (4) is a public or other nonprofit institution, and (5) is accredited by a nationally recognized accrediting agency or association or, if not so accredited, (A) is an institution with respect to which the Secretary has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purposes for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time, or (B) is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited. Such term also includes any school which provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions of clauses (1), (2), (4), and (5). For purposes of this definition, the Secretary shall publish a list of nationally recognized accrediting agencies or associations which the Secretary determines to be reliable authority as to the quality of training offered. The term also includes a public or nonprofit private educational institution in any State which, in lieu of the requirement in clause (1), admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution.

"Primary clientele," with reference to a research library, means students, faculty, or other registered users of the applicant or grantee.

"State agency" means the State agency designated under section 1203 of the Act.

(Secs. 231 and 1201 of the Act; 20 U.S.C. 1041, 3474 and 3507)

§ 778.5 Eligibility for assistance.

(a) The Secretary awards grants under this part only to institutions with major research libraries. An institution with a major research library—

(1) Is a public or private nonprofit institution, including the library resources of an institution of higher education, an independent research li-

brary, or a State or other public library; and

(2) Has a library collection which is available to qualified users that—

(i) Makes a significant contribution to higher education and research, as determined by the strength of the library collection in meeting one or more of the factors described in the subdivisions under § 778.7(a)(1);

(ii) Is broadly based, as determined by the strength of the library collection in meeting one or more of the factors described in the subdivisions under § 778.7(a)(2);

(iii) Is recognized as having national or international significance for scholarly research, as determined by the strength of the library collection in meeting one or more of the factors described in the subdivisions under § 778.7(a)(3);

(iv) Is of a unique nature, and contains material not widely available, as determined by the strength of the library collection in meeting one or more of the factors described in the subdivisions under § 778.7(a)(4); and

(v) Is in substantial demand by researchers and scholars not connected with the applicant institution, as determined by the strength of the library collection in meeting one or more of the factors described in the subdivisions under § 778.7(a)(5).

(3) The requirements in paragraph (a)(2) of this section must be met by the library collection of the institution with a major research library applying for a grant. In the case of a consortium which applies as a public or private nonprofit institution, these requirements must be met by the library collection of the consortium institution and not by the separate collections of the members which make up the consortium.

(Sec. 231 of the Act; 20 U.S.C. 1041)

(b) *Ineligibility of section 211 or section 224 grantees.*

(1) An institution receiving a grant under section 211 of the Act (Resource Development Grants of the College Library Resources Program) or 224 of the Act (Special Purpose Grants under the Library Training and Research Development Program) is ineligible to receive a grant under this part in the same fiscal year.

(2) For purposes of this paragraph, each branch campus of an institution of higher education is deemed to be a separate institution.

(3) An institution of higher education must respond to the eligibility and application requirements and evaluation criteria in this part, as applicable, without regard to any of its library collections located at a campus which receives a grant in the same fiscal year under section 211 or section 224 of the Act, as amended.

(Sec. 231 of the Act; 20 U.S.C. 1041)

§ 778.6 Applications.

Each applicant for a grant under this part shall submit an application to the Secretary.

The application must include the following:

(a) Information sufficient to enable the Secretary to determine the eligibility of the applicant under § 778.5.

(b) A description of the methods and manner of administration of the proposed project, including any plan of acquisition.

(Sec. 231 of the Act; 20 U.S.C. 1041)

§ 778.7 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new grants. The maximum score for all of the criteria is 110 points.

(a) *Significance as a major research library.* The strength of the applicant in meeting each of the following elements of a major research library:

(1) The extent to which the applicant's library collection makes a significant contribution to higher education and research. (16 points) Consideration will be given to such factors as—

(i) Major research projects for which the library has made resources available in the past fiscal year (only a general and brief summary of information is expected in the application);

(ii) For institutions of higher education, the amount the institution expended in Federal or other research funds, and the number of projects conducted by the institution with these funds in the past fiscal year;

(iii) Other evidence of substantial service to researchers and scholars; and

(iv) For institutions of higher education, the number of doctoral programs offered and the number of doctoral degrees awarded in the past fiscal year.

(2) The extent to which the applicant's library collection is broadly based. (12 points) Consideration will be given to such factors as—

(i) The breadth of the library collection with respect to the number of subject areas covered or the comprehensiveness of special collections in particular subject areas;

(ii) The size of the collection with respect to volumes and titles, manuscripts, microforms, and other types of materials; and

(iii) The number of current periodical subscriptions.

(3) The extent to which the applicant's library collection is recognized as having national or international significance for scholarly research. (8 points) Consideration will be given to such factors as—

(i) The number of interlibrary loans (including copies in lieu of originals) made by the applicant during the past fiscal year to libraries located outside the State in which the applicant is located;

(ii) The number of such loans to libraries located outside the regional geographic area in which the applicant is located;

(iii) The number of such loans to libraries located outside the United States;

(iv) The extent to which loans of the applicant's materials described in paragraphs (a)(3)(i)-(iii) of this section are made under cooperative arrangements by the applicant with libraries in other States, regions, and countries; and

(v) Other evidence of national or international significance for scholarly research.

(4) The extent to which the applicant's library collection is of a unique nature, and contain material not widely available. (8 points) Consideration will be given to such factors as—

(i) The number and nature of special collections containing research materials not widely available; and

(ii) The availability of printed (or otherwise published) catalogs or other guides to the special collections.

(5) The extent to which the library collection is in substantial demand by researchers and scholars not connected with the applicant institution. (4 points) Consideration will be given to such factors as—

(i) The number and type of institutions with which the applicant has formal, cooperative agreements for library and information services;

(ii) The extent to which the library lends more on interlibrary loans than it borrows; and

(iii) The extent of loan requests from users outside the library's primary clientele.

(b) *Nature of project.*

(1) The extent to which the specific objectives and activities of the project are designed to contribute to the purposes of this part (20 points) by—

(i) Helping the applicant to maintain and strengthen its library collection, with particular regard to whether the project builds upon one or more existing special collections of the applicant which have national or international significance for scholarly research; and/or

(ii) Making the applicant's research holdings available to other libraries for wider use by researchers and scholars. In applying this factor, the Secretary considers—

(A) The extent to which the project is designed to increase the availability of existing collections of the applicant which have national or international significance for scholarly research; and

(B) The extent to which the project will strengthen the applicant's capacity for participating in library networks and other cooperative library arrangements for sharing of library resources.

(2) The applicant's institutional commitment and capability to continue and build upon the Federal project upon its expiration (4 points).

(3) The extent to which the specific proposed activities and expenditures under the project are new and innova-

tive activities or are designed to expand upon and supplement the applicant's activities and expenditures. (4 points)

(4) *Plan of operation.* (11 points)

(i) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Secretary looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(5) *Quality of key personnel.* (8 points)

(i) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Secretary looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b) (5)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its non-discriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(6) *Budget and cost effectiveness.* (6 points)

(i) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Secretary looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(7) *Evaluation plan.* (6 points)

(i) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

CROSS-REFERENCE: 34 CFR 75.590 Evaluation by the grantee.

(ii) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(8) *Adequacy of resources.* (3 points)

(i) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Secretary looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(c) *Projects eligible under other Federal programs.*

Notwithstanding the criteria in paragraphs (b)(8)(ii) (A) and (B) of this section, the Secretary will not fund a project eligible for assistance under other Federal programs authorizing grants to support research libraries, such as the Medical Library Assistance Act of 1965 (as amended by Pub. L. 93-353), unless the application—

(1) Documents that payments under this part will not duplicate payments under other Federal programs; and

(2) Demonstrates a special need for funding under this part.

(Sec. 231 of the Act; 20 U.S.C. 1041)

[45 FR 85430, Dec. 24, 1980; 46 FR 26058, May 11, 1981]

§ 778.8 Regional balance.

The Secretary endeavors to achieve a broad and equitable geographical distribution in the allocation of funds under this part by assigning a maximum of 15 additional points to applications which, if funded, would contribute to a regional balance. These points are assigned according to the following steps:

(a) Applications will first be evaluated on the basis of selection criteria in § 778.7 and a tentative slate will be prepared of the highest rated applications which would have been funded if regional balance were not considered. (These applications are referred to as the "highest rated applications".)

(b) The Secretary will plot these highest rated applications to see their locations in terms of the following designated regional areas:

AREA

1. The New England States (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont).
2. New York State, Puerto Rico, and the Virgin Islands.
3. The Middle Atlantic States (Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, and West Virginia).
4. The Southeastern States (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia).
5. The Great Lakes States (Indiana, Michigan, and Ohio).
6. The Midwest States (Illinois, Iowa, Minnesota, Missouri, and Wisconsin).
7. The Southwestern States (Arizona, Arkansas, Louisiana, New Mexico, Oklahoma, and Texas).
8. The Mountain Plains States (Colorado, Kansas, Montana, Nebraska, Nevada, North Dakota, South Dakota, Utah, and Wyoming).
9. The Pacific Northwest States (Alaska, Idaho, Oregon, and Washington).
10. California, Hawaii, American Samoa, and Guam.

(c) The Secretary will then assign 15 extra points to each of the three applications with the most points in each regional area which has two or fewer of the highest rated applications. For example, if the highest rated applications were all those with scores of 75 points and above, and a regional area had applications with scores of 82, 70, 62, and 55, 15 extra points would be awarded to each of the applications with 82, 70, and 62 points. The application with 55 points would not receive extra points.

(d) The Secretary may award 15 additional points, in accordance with the standards in paragraph (c), to applications to avoid causing regional areas which did not receive points under paragraph (c) to be left with two or fewer fundable applications.

(Sec. 232 of the Act; 20 U.S.C. 1041)

[45 FR 85430, Dec. 24, 1980; 46 FR 26058, May 11, 1981]

§ 778.9 Authorized activities.

(a) General.

Funds provided under this part may be used for activities or expenditures which achieve one or both of the purposes described in § 778.3, exclusive of construction costs. These authorized activities or expenditures may include, but are not limited to—

(1) Acquiring books and other additional materials to be used for library purposes;

(2) Binding, rebinding, and repairing books and other materials to be used for library purposes, and preserving such materials by making photocopies, by means of treatment to lengthen the life of paper or bindings, or by other means;

(3) Cataloging, abstracting, and making available lists and guides of library collections;

(4) Distributing library materials and bibliographic information to users beyond the primary clientele through the mail or through electronic, photo-

graphic, magnetic, optical, or other reprographic techniques;

(5) Acquiring additional equipment and supplies that will assist in making library materials available to users beyond the primary clientele;

(6) Hiring necessary additional staff to carry out activities funded under this part; and

(7) Communications with other institutions incidental to other activities under this part.

(Secs. 201 and 231 of the Act; 20 U.S.C. 1021, 1041)

§ 778.10 Consultation with State agency.

Each institution of higher education which receives a grant under this part shall annually inform the State agency designated under section 1203 of the Higher Education Act, as amended, of its activities under this part.

(Sec. 202 of the Act; 20 U.S.C. 1022)

PART 790—TERRITORIAL TEACHER TRAINING ASSISTANCE

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790.2 Eligible parties.
790.3 Regulations that apply to the Territorial Teacher Training Assistance Program.
790.4 Definitions.

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

790.10 Project activities.

Subpart C—How Does One Apply for a Grant?

790.20 How to apply for funds.

Subpart D—How Is a Grant Made?

790.30 How applications are reviewed.
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Subpart E—What Conditions Must be Met by a Grantee?

790.40 Allowable costs.
790.41 Limitations on costs.
790.42 Participation of private school teachers.

Authority: Title XV, Part C, sec. 1525, Education Amendments of 1978 (Pub. L. 95-561), 92 Stat. 2379, unless otherwise noted.

Source: 45 FR 53996, Aug. 13, 1980, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

Subpart A—General

§ 790.1 Description of the Territorial Teacher Training Assistance Program.

The Territorial Teacher Training Assistance Program provides Federal assistance for the training of teachers in schools in Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(Sec. 1525, Pub. L. 95-561)

§ 790.2 Eligible parties.

Each territory is eligible to receive a grant. If a jurisdiction desires a grant, its SEA—either alone or in conjunction with an IHE—shall submit an application. If an SEA submits an application in conjunction with an IHE, the SEA remains fully responsbile for the administration of the project.

(Sec. 1525, Pub. L. 95-561)

§ 790.3 Regulations that apply to the Territorial Teacher Training Assistance Program.

(a) The following regulations apply to grants under the Territorial Teacher Training Assistance Program:

(1) (i) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Program), except for 34 CFR 75.202-75.206; and

(ii) 34 CFR Part 77 (Definitions).

(2) The regulations in this Part 790.

(b) The "Introduction to Department Programs" at the beginning of EDGAR includes general information to assist in using regulations that apply to Department programs.

(Sec. 1525, Pub. L. 95-561)

§ 790.4 Definitions.

(a) *Definitions in EDGAR.* The following terms in this part are defined in 34 CFR Part 77: Applicant, Application, Award, Budget, EDGAR, Grant, Grantee, Nonprofit, Private, Project, Public, State educational agency (SEA).

(b) *Specific program definitions.* As used in these regulations—

"Teacher" means a person who has the primary responsibility for teaching elementary and secondary students in an educational institution, whether public or private. The term includes persons who provide instruction to adults in courses traditionally provided to students in elementary and secondary schools.

"Nonindigenous contract teacher" means a teacher who serves on a contract basis, who has been employed in the school system for less than three years, and who was not at the time of entering the contract, a resident of the territorial jurisdiction in which the service will be performed.

(c) *Other definitions.* "Institution of higher education" is defined in the Higher Education Act of 1965 (Pub. L. 89-329), as amended.

(Sec. 1525, Pub. L. 95-561; 20 U.S.C. 1141)

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 790.10 Project activities.

(a) Projects funded under this part provide for the training of teachers in the five territorial jurisdictions who teach—

(1) Students in grades kindergarten through 12 in public and nonprofit private schools; or

(2) Adults in courses traditionally provided by elementary or secondary schools.

(b) All activities must be directly related to teaching. Activities that may be funded include, but are not limited to, the following:

(1) In-Service teacher training in—

(i) Basic Skills development; or

(ii) Specific subject areas.

(2) Curriculum development.

(3) Use of instructional materials or equipment.

(4) Classroom management.

(5) Training for teachers to achieve full certification under the appropriate territorial requirements.

(c) Nonindigenous contract teachers may receive only that training directly necessary for teaching within the territorial schools, rather than training concerned with general teacher competency.

(d) Except in unusual circumstances, as determined by the Secretary, the Secretary does not approve training to be provided outside the geographical limits of the territory(ies) involved.

(Sec. 1525, Pub. L. 95-561)

Subpart C—How Does One Apply for a Grant?

§ 790.20 How to apply for funds.

(a) The "Introduction to Department Programs" at the beginning of EDGAR includes general information to assist in applying for assistance under a Department program.

(b) The Secretary makes a grant only if the applicant submits an application meeting the applicable requirements under Subpart C of 34 CFR Part 75 of EDGAR and the following requirements:

(1) For the first year of the program an application must contain:

(i) A needs assessment defining teacher training needs of both public and private schools in the jurisdiction covered by the application;

(ii) A four-year plan explaining the methods to be employed and activities to be conducted to meet the teacher training needs identified in paragraph (b)(1)(i) of this section;

(iii) A detailed explanation of the goals, objectives, and activities to be carried out in the first year of the program;

(iv) A detailed proposed budget for the accomplishment of the activities described in paragraph (b)(1)(iii) of this section for the fiscal year for which the application is submitted; and

(v) The estimated funding needs for each subsequent year of the four-year plan.

(2) For each subsequent year of the program, an application must contain:

(i) Any revisions to the needs assessment statement or amendments to the four year plan statement submitted in paragraphs (b)(1)(i) and (1)(ii) of this section;

(ii) A statement regarding the extent to which the previous year's project met the goals and objectives set forth in that year's application;

(iii) A detailed explanation of the activities to be carried out for the current project year;

(iv) A detailed proposed budget for the current project year; and

(v) An updated estimate of funding needs for the subsequent years of the project.

(20 U.S.C. 1221e-3(a)(1))

Subpart D—How Is a Grant Made?

§ 790.30 How applications are reviewed.

The Secretary reviews an application to ensure that—

(a) The proposed objectives and activities respond to the needs assessment stated in the application; and

(b) The proposed budget is applicable to these needs.

§ 790.31 How funds are alloted.

(a) The Secretary allots funds to each territory on the basis of the identified needs and a review of the proposed activities and budget in its application.

(b) (1) If the total determined allotments to the territories exceed the total amount of funds appropriated, the Secretary reduces each allotment.

(2) However, the Secretary allots to each territory whose application for funds is approved at least five percent of each fiscal year's appropriation.

(Sec. 1525, Pub. L. 95-561)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 790.40 Allowable costs.

(a) Funds may cover all or part of the cost of establishing and implementing a teacher training assistance project, subject to applicable cost principles in 34 CFR Part 75 and 34 CFR Part 74.

(b) These costs may include, but are not limited to—

(1) Research material and resources;

(2) Consultants; and

(3) Training of project staff.

§ 790.41 Limitations on costs.

(a) Funds received under this program may not be used for the training of teachers outside the geographic limits of the territory(ies) involved, except—

(1) In unusual circumstances as determined by the Secretary; and

(2) With prior written approval of the Secretary.

(b) The application must describe the circumstances that require training outside the geographic limits of the territories if funds are requested for that purpose.

(Sec. 1525, Pub. L. 95-561)

§ 790.42 Participation of private school teachers.

(a) A grantee shall provide teachers in private nonprofit schools in the area served by the project an opportunity to participate in the training on a basis comparable to that provided for public school teachers.

(b) Training for teachers in private nonprofit schools shall be provided in accordance with §§ 76.658 through 76.662 of EDGAR.

(Sec. 1525, Pub. L. 95-561)

PART 793—TEACHER CORPS

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APPENDIX—PART A OF TITLE V OF THE HIGHER EDUCATION ACT OF 1965, AS AMENDED—TEACHER CORPS PROGRAM STATEMENT OF PURPOSE AND AUTHORIZATION OF APPROPRIATIONS

AUTHORITY: Title V-A of the Higher Education Act of 1965 (Pub. L. 89-329), as amended by Pub. L. 90-35 in 1967: Pub. L. 90-575 in 1968; Pub. L. 91-230 in 1970; Pub.

L. 92-318 in 1972; Pub. L. 93-380 in 1974; and Pub. L. 94-482 in 1976 (20 U.S.C. 1101 et seq.), unless otherwise noted.

Source: 43 FR 7524, Feb. 23, 1978, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

Effective Date Note: At 46 FR 42848, Aug. 25, 1981, Part 793 was removed effective Oct. 1, 1982.

Subpart A—General

§ 793.1 Scope

(a) This regulation applies to the Teacher Corps program. The statute that applies to the Teacher Corps program is Title V-A of the Higher Education Act of 1965, as amended. A copy of the statute is included as an appendix to this part.

(Sec. 511 et seq.; 20 U.S.C. 1101 et seq.)

[43 FR 7524, Feb. 23, 1978, as amended at 45 FR 22539, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 793.2 Purpose.

The purpose of the Teacher Corps program is to strengthen the educational opportunities available to children in areas having concentrations of low income families, to encourage colleges and universities to broaden their programs of teacher preparation, and to encourage institutions of higher education and local educational agencies to improve programs of training and retraining for teachers, teacher aides, and other educational personnel.

(Sec. 511(a); 20 U.S.C. 1101(a))

§ 793.3 Definitions.

As used in this part: "Institution of higher education" means an institution of higher education as defined in Section 1201(a) of the Higher Education Act of 1965, as amended.

(Sec. 1201(a); 20 U.S.C. 1141(a))

"Low-income family" means a family with a child whom the local educational agency may count under Section 103 of Title I of the Elementary and Secondary Education Act of 1965, as amended.

(Sec. 513(a)(3); 20 U.S.C. 1103(a)(3))

"Other educational personnel" means administrators, supervisors, and other specialized educational personnel.

(Sec. 513(a)(1); 20 U.S.C. 1103(a)(1))

"Teacher" means a person who has a teaching certificate valid in the State in which the Teacher Corps project is located, and who has had full-time paid teaching experience.

(Sec. 513(a)(1), 20 U.S.C. 1103(a)(1))

"Teacher aide" means a person employed as a paraprofessional in a school or correctional facility who assists a teacher in performing educational duties. The term does not include teacher-interns or non-educational personnel. State and local rules determine whether certification is required for a teacher aide.

(Sec. 513(a)(1); 20 U.S.C. 1103(a)(1))

"Teacher-intern" means a person recruited to serve in a Teacher Corps project who has a bachelors degree or its equivalent, with or without a teaching certificate, but who has not had fulltime paid teaching experience. However, a person who has completed two or more years of a program for which credit was given toward a bachelors degree may serve as a teacher-intern if there are not enough teacher-interns candidates who have a bachelors degree.

(Sec. 513(a)(1); 20 U.S.C. 1103(a)(1))

[43 FR 7524, Feb. 23, 1978, as amended at 45 FR 22539, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 793.4 Regulations that apply to the Teacher Corps Program.

(a) *Regulations.* The following regulations apply to the Teacher Corps Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and Part 77 (Definitions).

(2) The regulations in this Part 793.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Department" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Department programs; and

(2) Applying for assistance under a Department program.

(20 U.S.C. 1221e-3(a)(1))

[45 FR 22539, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

Subpart B—Elements of a Teacher Corps Project

PARTICIPANTS

§ 793.10 Joint Participants.

(a) Each project must be carried out jointly by:

(1) One or more institutions of higher education;

(2) One or more local educational agencies; and

(3) A community council established under § 793.14.

(b) A project may also include participation by a State educational agency. The State educational agency may participate by providing training to the Teacher Corps members.

(c) The institutions, agencies and community council which participate in a project shall collaborate in planning, carrying out, and evaluating the project.

(Sec. 513 (a), (e), (g); 20 U.S.C. 1103 (a), (e), (g))

§ 793.11 Institution of higher education.

Each project must include at least one institution of higher education which offers academic course work at the graduate level leading to a graduate degree in the field of education, unless none of the teacher-interns has a bachelors degree.

(Sec. 513(a)(2), (b); 20 U.S.C. 1103 (a)(2), (b))

§ 793.12 Project schools.

(a) Each project must include two to four complete schools which together include all grade levels provided by the local educational agency. This must include at least grades one through twelve. The schools selected must be a feeder system. This means that a majority of pupils enrolled in the elementary school progress to the high school or to the intermediate school, if an intermediate school is included, and that a majority of pupils from the intermediate school progress to the high school. If the applicant local educational agency does not have a feeder system as described in this paragraph, the following are acceptable alternatives.

(1) A single school if that school includes grades one through twelve; or

(2) More than four schools where additional schools are needed to include all grade levels in the feeder system; or

(3) More than four schools where one or more schools in the feeder system employ twelve or fewer teachers; or

(4) Two to four schools in a feeder system which does not include a high school (grades eight or nine through twelve) if the high school is in a separate local educational agency.

(b) If the alternatives in paragraph (a) of this section, do not meet the needs of the applicant local educational agency, it may propose another arrangement provided that the entire educational staffs of schools serving a definable low income community are included.

(c) Each school included in the project which includes elementary grades must be eligible for a project under Title I of the Elementary and Secondary Education Act of 1965.

(Sec. 513(a)(3), 20 U.S.C. 1103(a)(3))

§ 793.13 Involvement of all educational school personnel in the project.

All educational personnel employed by a project school must be involved in planning and carrying out the project in that school.

(Sec. 513(a)(3); 20 U.S.C. 1103(a)(3))

§ 793.14 Community council.

(a) Each project must include an elected community council of at least seven members.

(b) The community council must be representative of:

(1) Parents of the children attending the project schools; and

(2) Other residents of the areas served by the project schools.

(c) An existing elected council which is broadly representative of the community in which the project is located may serve as the community council under this part for up to three months after the date of the initial grant award.

(d) A community-wide election must be held to elect a community council for the project within the three months after the date of the initial grant award (community-wide means within the attendance boundaries of the project schools).

(Sec. 513 (e)(1), (g); 20 U.S.C. 1103 (e)(1)(g))

§ 793.15 Policy board.

(a) Each project must be planned and operated under the supervision of a policy board.

(b) The policy board must include the following members:

(1) The dean of the school of education, or other component that offers graduate training, in the institution of higher education;

(2) The superintendent of the local educational agency; and

(3) The chairperson of the community council.

(c) The policy board members listed in paragraph (b) of this section may agree to add members to the board who represent:

(1) Organizations which represent teachers in the local educational agency;

(2) Organizations which represent principals in the local educational agency;

(3) Students;

(4) Teacher-interns; or

(5) Other persons or organizations which the three board members determine would be appropriate.

(d) Each policy board decides its own voting procedures.

(Sec. 513 (a), (e), (g); 20 U.S.C. 1103 (a), (e), (g))

§ 793.16 Other participating groups.

A project may include the participation of other groups, such as teacher organizations, professional associations, students, and teacher-interns.

(Sec. 513 (a), (g); 20 U.S.C. 1103 (a), (g))

§ 793.17 Involvement of State educational agency.

(a) The State educational agency must be kept informed of the progress and experience of the project, including,

(b) Project matters which would contribute to the improvement of State teacher certification requirements.

(Sec. 512(a) (2), (3), (5); 20 U.S.C. 1103(a) (2), (3), (5))

GRANTS

§ 793.30 Project duration.

(a) Each application may be for up to a five-year project period.

(b) The Secretary's assistance to a project may not continue after the fifth year.

(Sec. 513(g); 20 U.S.C. 1103(g))

[43 FR 7524, Feb. 23, 1978, as amended at 45 FR 22539, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 793.31 Size of grants.

The total amount which the Secretary awards to the grantees under a project is limited to:

(a) Not more than $150,000 for the first year;

(b) Approximately $300,000 for each of the second and third years if the project is for five years;

(c) Approximately $200,000 for the next to last year: and

(d) Approximately $150,000 for the last year:

(Sec. 513(g); 20 U.S.C. 1103(g))

§ 793.32 Separate grants.

(a) If an application is selected for assistance under this part the Secretary awards a grant to the institution of higher education and a grant to the local educational agency. If a State educational agency participates in a project under § 793.10(b), the Secretary awards a separate grant to the State educational agency.

(b) If the application includes more than one institution of higher education or more than one local educational agency the Secretary may award a grant to one or more of those institutions or agencies.

(Sec. 513 (a), (g); 20 U.S.C. 1103 (a), (g))

§ 793.33 Time period before agencies or institutions may apply for a new project.

If an institution of higher education or a local educational agency participates in a project it may not apply for a new project until three years after the end of that participation. If a local educational agency is subdivided into districts, this restriction applies only to the district within the local educational agency which participates in the project.

(Sec. 513(g); 20 U.S.C. 1103(g))

PROJECT PROGRAM

§ 793.40 Initial developmental year.

During the first year of a project:

(a) The project must be developed and organized;

(b) The community council must be elected;

(c) The team leader must be hired;

(d) The teacher-interns must be recruited; and

(e) Any revisions of the objectives adopted under §§ 793.61-793.65 must be planned and developed.

This period may be less than a year if these functions can be completed in a shorter time.

§ 793.41 Achievement of objectives during the remaining four years.

(a) During the remaining four years of a project, activities must be carried out which are designed to achieve the objectives adopted under §§ 793.61-793.66.

(b) Activities during this period must consist primarily of training.

(Sec. 513 (a)(1), (g); 20 U.S.C. 1103 (a)(1), (g))

§ 793.42 Functions of each participant.

The applicants must agree to the functions each will perform, subject to §§ 793.43-793.45.

(Sec. 513(g); 20 U.S.C. 1103(g))

§ 793.43 Institution of higher education functions.

An institution of higher education may perform the following functions under its grant:

(a) Recruiting, selecting, and enrolling Teacher Corps members.

(b) Training Teacher Corps members.

(c) Paying the administrative and secretarial costs of the community council.

(d) Paying the costs of project administration, including planning, documentation, evaluation, and dissemination.

(Sec. 513 (a), (e); 20 U.S.C. 1103 (a), (e))

§ 793.44 Local educational agency functions.

A local educational agency may perform the following functions under its grant:

(a) Recruiting, selecting and enrolling Teacher Corps members.

(b) Training Teacher Corps members.

(c) Paying the compensation of Teacher Corps members.

(d) Paying the compensation for released time for educational personnel while in training, within the limitations in § 793.92.

(e) Paying the administrative and secretarial costs of the community council.

(f) Paying the costs of project administration, including planning, documentation, evaluation, and dissemination.

(Sec. 513 (a), (e); 20 U.S.C. 1103 (a), (e); Sec. 541(f); 20 U.S.C. 1104(f))

§ 793.45 Training by institutions of higher education.

(a) Each institution of higher education which receives a grant under this part shall provide training to Teacher Corps members. This must include training designed to achieve the objectives adopted under § 793.62(b) (improvement of competency of educational personnel).

(b) An institution of higher education which does not offer academic course-work beyond the bachelor's degree level may provide training for volunteers and teacher aides, if this type of training is designed to achieve the objectives adopted under § 793.62.

(Sec. 513 (a)(2), (5), (b), (g); 20 U.S.C. 1103(a) (2), (5), (b), (g))

§ 793.46 Pre-service and in-service training.

Training under this part must include pre-service training for teacher-interns and in-service training for other educational personnel employed by the project schools.

(Sec. 513(a)(2); 20 U.S.C. 1103(a)(2))

§ 793.47 Training program for teacher-interns.

(a) The training program for a teacher-intern must be developed by the project director in consultation with the team leader and the institution of higher education which provides the training.

(b) The training must include:

(1) Practical classroom experience in each of the project schools;

(2) Academic study: and

(3) Practical experiences and training in the community served by the project.

(c) The practical classroom experience of a teacher-intern may not average more than one half of each school day during the period of his or her internship.

(d) Training may also be provided in a pre-school early childhood setting if that training is consistent with the objectives adopted under §§ 793.61-793.65.

(Sec. 513(a)(2), (g); 20 U.S.C. 1103(a)(2), (g))

§ 793.48 Graduate Level training for teachers and teacher-interns.

Training for teachers and teacher-interns who have a bachelor's degree must be at the graduate level. Training for teacher-interns who do not have a bachelor's degree may be at the undergraduate level.

(Sec. 513(a) (1), (b), (g); 20 U.S.C. 1103(a) (1), (b), (g))

§ 793.49 Degree and certification for teacher-interns.

Training must be designed so that a teacher-intern begins his or her internship three months before the beginning of the second school year of the project and has the opportunity to complete the internship, and receive a degree and a teaching certification by the end of the third school year of the project.

(Sec. 513(a) (2), (b); 20 U.S.C. 1103(a) (2), (b))

§ 793.50 Field and community based training.

Training of Teacher Corps members must be primarily field based and carried out in the community served by the project.

(Sec. 513(a)(2); 20 U.S.C. 1103(a)(2))

§ 793.51 Training for volunteers.

A grantee may provide training to volunteers to prepare them for service in the project.

(Sec. 513 (a)(5), (b); 20 U.S.C. 1103(a)(5), (b))

§ 793.52 Documentation of project experience.

(a) Each project must include documentation of all significant factors which influence project experience and results, including:

(1) The characteristics and condition of the local setting; and

(2) The usefulness of project processes, practices, and products in the project schools.

(b) The documentation under paragraph (a) of this section must be used to:

(1) Review progress in accomplishing the objectives developed under §§ 793.61-793.65; and

(2) Revise those objectives if necessary.

(Sec. 511; 20 U.S.C. 1101; Sec. 513(g); 20 U.S.C. 1103(g))

BASIC OUTCOMES AND PROJECT OBJECTIVES

§ 793.60 Basic outcomes.

Each project must be designed to achieve the following outcomes:

(a) An improved school climate which fosters the learning of children of low-income families.

(b) An improved educational personnel development system for persons who serve or who are preparing to serve in schools for children of low-income families.

(c) The continuation of educational improvements (including products, processes, and practices) made as a result of the project, after Federal funding ends.

(d) The adoption or adaptation of those educational improvements by other educational agencies and institutions.

(Sec. 511; 20 U.S.C. 1101; Sec. 513(g); 20 U.S.C. 1103(g))

§ 793.61 Project objectives.

(a) Each project must include objectives which are designed to achieve the outcomes described in § 793.60.

(b) These project objectives must be developed jointly by the institution of higher education, the local educational agency, and the community council.

(c) Each project objective must be adopted by the policy board.

(Sec. 511; 20 U.S.C. 1101; Sec. 513(g); 20 U.S.C. 1103(g))

§ 793.62 School objectives.

(a) Each project must include specific objectives designed to achieve the outcome under § 793.60(a) (improved school climate) in each of the project schools. These objectives may include curriculum, organizational, or other changes that affect an entire school. All project schools must jointly participate in the development of these specific objectives.

(b) In addition to the objectives under paragraph (a) of this section, each project school must have objectives designed to:

(1) Improve the competency of all educational personnel employed by the project schools (and the teacher-interns) to provide education that is multicultural and to be knowledgeable of and sensitive to the needs of diverse cultures, regardless of the pupil population served by the project;

(2) Improve the competency of these educational personnel, the teacher interns, and the project schools, to deal with a wide range of variability in children; and

(3) Provide all educational personnel employed by the project schools (and the teacher-interns) with the opportunity to improve their competency to identify children with learning and behavioral problems, diagnose the special needs of those children, and prescribe learning activities to meet those needs.

(Sec. 511(a); 20 U.S.C. 1101(a); Sec. 513(g); 20 U.S.C. 1103(g))

§ 793.63 Educational personnel development system objectives.

Each project must include specific objectives designed to achieve the outcome under § 793.60(b) (improved educational personnel development system), including objectives to achieve:

(a) Basic and systemic improvements in the methods used by the institution of higher education and the local educational agency to train educational personnel;

(b) The development of the capacity of the institution of higher education to provide training that will achieve the objectives under § 793.62(b); and

(c) Provision of pre-service and in-service training as an integral process.

(Sec. 511(a) 20 U.S.C. 1101(a); sec. 513(g); 20 U.S.C. 1103(g))

[43 FR 7524, Feb. 23, 1978; 43 FR 11704, Mar. 21, 1978. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 793.64 Institutionalization objectives.

Each project must include specific objectives designed to achieve the outcome under § 793.60(c) (continuation of educational improvements).

(Sec. 511(a); 20 U.S.C. 1101(a); sec. 513(g); 20 U.S.C. 1103(g))

§ 793.65 Demonstration and dissemination objectives.

Each project must include specific objectives designed to achieve the outcome under § 793.60(d) (adaptation of educational improvements by other agencies) by demonstrating and disseminating project processes, practices, and products found useful in the project schools to:

(a) Persons involved in the project;

(b) Schools of the local educational agency and components of the institution of higher education which are not involved in the project;

(c) Other local educational agencies, institutions of higher education, and communities; and

(d) Others interested in educational policy.

(Sec. 511(a); 20 U.S.C. 1101(a); sec., 513(g); 20 U.S.C. 1103(g))

TEACHER CORPS MEMBERS

§ 793.80 Educational personnel, teacher-interns, and volunteers.

The following persons are Teacher Corps members:

(a) Teachers and other educational personnel who are employed by a project school;

(b) Volunteers who serve as part-time tutors of full-time instructional assistants in project schools; and

(c) Teacher-interns.

(Sec. 513(a)(1); 20 U.S.C. 1103(a)(1))

§ 793.81 Number of teacher-interns.

(a) Each project must include at least four teacher-interns.

(b) Each project may include up to one teacher-intern for each five teachers in the project schools if the local educational agency will employ all teacher-interns who complete their internships.

(Sec. 513(f); 20 U.S.C. 1103(g))

§ 793.82 Recruiting teacher-interns.

(a) The Secretary provides each grantee with a national listing of qualified applicants for teacher-internships.

(b) A grantee may recruit teacher-interns from the national listing of qualified applicants, but is not required to do so.

(c) A grantee must design its recruitment of teacher-interns so that it gives consideration to persons who are broadly representative of the ethnic and cultural characteristics of the community served by the project.

(d) The Secretary Publishes a notice annually in the FEDERAL REGISTER that explains how to apply for teacher-internships.

(Sec. 513(a) (1), (3); 20 U.S.C. 1103(a) (1), (3))

§ 793.83 Teacher-intern teams.

Teacher-interns must be organized into teams that include at least four teacher-interns and one experienced teacher who serves as leader of the team. Each team must spend a portion of the internship in each project school.

(Sec. 513(a)(3); 20 U.S.C. 1103(a)(3))

§ 793.84 Teacher-interns may not replace teachers.

(a) A grantee may not use a teacher-intern to replace, or carry out the functions of a teacher who is or would otherwise have been employed in a project school.

(b) A teacher-intern may not be used as a substitute teacher.

(Sec. 517; 20 U.S.C. 1107)

§ 793.85 Federal employees.

Members of the Teacher Corps are not considered Federal employees except for the purposes of the Federal tort claims provisions of Title 28 of the United States Code.

(Sec. 515 (a)-(c); 20 U.S.C. 1104 (a)-(c))

§ 793.86 Other Federal student assistance programs.

Members of the Teacher Corps may not receive a loan under the National Direct Student Loan Program authorized by Title IV-E of the Higher Education Act of 1965 (20 U.S.C. 1087-aa-1087-ff), or a grant under the Supplemental Educational Opportunity Grant Program authorized by Title IV-A-2 of the Higher Education Act of 1965 (20 U.S.C. 1070b-1070b-3).

(Sec. 515(d)-20 U.S.C. 1105 (d))

§ 793.87 Compensation of team leaders.

(a) The local educational agency shall employ each teacher-intern team leader.

(b) The local educational agency shall compensate a team leader at a rate comparable to that being paid to other personnel in the same agency who perform similar work.

(c) A local educational agency shall use funds under its grant to pay up to 90 percent of the compensation paid under paragraph (b) of this section.

(Sec. 513(a)(3); 20 U.S.C. 1103(a)(3); sec. 514(a)(1); 20 U.S.C. 1104(a)(1))

§ 793.88 Teacher-intern compensation during their term of service with the project.

(a) The local educational agency shall compensate a teacher-intern during each period he or she serves in the project schools at a rate of $150 per week, subject to paragraph (c) of this section.

(b) This compensation must include an additional $15 per week for each dependent who receives more than half of his or her support from the teacher-intern, subject to paragraph (c) of this section.

(c) The total compensation paid to a teacher-intern under paragraphs (a) and (b) of this section may not exceed the compensation paid to a beginning teacher employed by the local educational agency for comparable periods of time.

(d) A local educational agency shall use funds under its grant to pay up to 90 percent of the compensation paid under this section.

(Sec. 513(a)(3); 20 U.S.C. 1103(a)(3); sec. 514(a)(2); 20 U.S.C. 1104(a)(2))

§ 793.89 Teacher-intern training stipends.

(a) The institution of higher education shall pay a training stipend at $150 per week to each teacher-intern during each period he or she receives training at that institution. The institution of higher education may not pay this stipend during the periods when the teacher-intern serves in the project schools.

(b) The training stipend must include an additional $15 per week for each dependent who receives more than one-half of his or her support from the teacher-intern.

(c) An institution of higher education shall use funds under its grant to pay up to 100 percent of the cost of the amounts paid under paragraphs (a) and (b) of this section.

(Sec. 514(b); 20 U.S.C. 1104(b))

§ 793.90 Teacher-intern and team leader medical insurance.

(a) The grantees shall provide teacher-interns and team leaders with medical insurance coverage (including hospitalization) during their participation in a project.

(b) Dependents who receive more than one half of their support from a teacher-intern must be included in this insurance coverage.

(c) A grantee which provides this medical insurance coverage shall use funds under its grant to pay up to 100 percent of the cost of the insurance.

(Sec. 514 (d), (e); 20 U.S.C. 1104 (d), (e))

§ 793.91 Training stipends for teachers and other educational personnel.

(a) The institution of higher education or local educational agency may pay a training stipend to each of the teachers and other educational personnel employed by a project school who participate in training under this part during a period of the year (if any) not covered by a local employment contract.

(b) The training stipend may be at a rate of not more than $100 per individual per week, prorated if the training is part-time.

(c) A local educational agency shall use funds under its grant to pay up to 100 percent of the cost of stipends paid under this section.

(Sec. 514(b); 20 U.S.C. 1104(b))

§ 793.92 Released time for educational personnel.

(a) If authorized by the Secretary, the local educational agency may use funds under its grant to pay the cost of releasing educational personnel from their regular duties in a project school to participate in training under this part.

(b) The Secretary may authorize a local educational agency to use funds under paragraph (a) of this section if the local educational agency demonstrates in its application that the project is or will be placed in jeopardy by the lack of compensation for released time.

(Sec. 514(f); 20 U.S.C. 1104(f))

§ 793.93 Compensation of volunteers.

(a) Volunteers who serve as part-time tutors or full-time instructional aides in project schools are paid or unpaid, according to local policy.

(b) If volunteers are paid, they must be compensated at a rate equal to that being paid other volunteers for similar work.

(c) A grantee which pays any compensation under this section shall use funds under its grant to pay up to 90 percent of that compensation.

(Sec. 513(a)(5); 20 U.S.C. 1103(a)(5); sec. 514(a)(3); 20 U.S.C. 1104(a)(3))

§ 793.94 Travel expenses of Teacher Corps members.

(a) The grantees shall pay, subject to paragraph (b) of this section:

(1) The necessary travel expenses of Teacher Corps members and their dependents;

(2) The necessary expenses for transportation of the household goods and personal effects of Teacher Corps members and their dependents; and

(3) Other necessary expenses of Teacher Corps members and their dependents which are directly related to their service in the project, including readjustment allowances proportionate to that service.

(b) A teacher-intern whose last permanent address before coming to a project is outside the community served by the project, shall be paid:

(1) By the institution of higher education for his or her necessary travel expenses to the project (by the least expensive common carrier or by private automobile subject to any institutional rules on reimbursement for mileage); and

(2) By the local educational agency for:

(i) The necessary travel expenses of teacher-intern dependents to the project (by the least expensive common carrier or by private automobile subject to any agency limits on reimbursement for mileage); and

(ii) The necessary expenses for shipment to the project of up to 11,000 pounds of household goods and personal effects owned by the teacher-intern or his or her dependents.

(Sec. 514(c); 20 U.S.C. 1104(c))

Subpart C—Youth Advocacy Projects

§ 793.100 Purpose and project design.

(a) *Purpose.* Under this subpart, the Secretary provides assistance to projects designed to attract and train educational personnel who provide remedial, basic, and secondary educational training (including literacy and communication skill training) to juvenile delinquents or youth offenders.

(b) *Project design.* A youth advocacy project must be designed to meet the special educational needs of juvenile delinquents or youth offenders.

(Sec. 513(a)(6); 20 U.S.C. 1103(a)(6))

§ 793.101 Other sections in this part apply to youth advocacy projects.

Subject to any exceptions specifically listed in this subpart, all of the sections in this part apply to youth advocacy projects.

(Secs. 551 et seq.; 20 U.S.C. 1103 et seq)

§ 793.102 Youth advocacy project joint participation.

(a) Section 793.10 (Joint participants) does not apply to youth advocacy projects.

(b) Each project assisted under this subpart must be carried out jointly by:

(1) One or more institutions of higher education;

(2) One or more local educational agencies;

(3) A community council established under § 793.104; and

(4) One or more of the following correctional facilities:

(i) A detention center;

(ii) An incarceratory institution;

(iii) A public or private non-profit alternative school for delinquent youth; or

(iv) A special center, within a public school, which serves the special needs of juvenile delinquents or youth offenders, or both.

(c) The correctional facility must participate equally under each section of the regulation in this part that requires joint participation or collaboration.

(d) A project assisted under this subpart may also include participation by a State educational agency.

(Sec. 513(a)(6)(e); 20 U.S.C. 1103 (a)(6)(e))

§ 793.103 Project schools.

(a) Section 793.12 (Project schools) does not apply to youth advocacy projects.

(b) A youth advocacy project must include one or more junior high schools or senior high schools, or both, of the local educational agency.

(c) A youth advocacy project may include one or more schools of the correctional facility.

(Sec. 513(a)(6); 20 U.S.C. 1103(a)(6))

§ 793.104 Youth advocacy project community council.

(a) Each youth advocacy project must include an elected community council of at least seven members.

(b) The community council must be representative of:

(1) The parents of the juvenile delinquents or youth offenders participating in the project; and

(2) The residents of the areas served by the project schools.

(Sec. 513(e)(1), (g); 20 U.S.C. 1103(e)(1), (g))

§ 793.105 Policy board.

The policy board under § 793.15 must include as a member the director of the correctional facility (or his or her equivalent).

(Sec. 513(a)(6); 20 U.S.C. 1103(a)(6))

§ 793.106 Youth advocacy projects—separate grants.

(a) If an application is selected for assistance under this subpart, the Secretary awards a grant to the institution of higher education, a grant to the local educational agency, and a grant to the correctional facility.

(b) If the application includes more than one institution of higher education, more than one local educational agency or more than one correctional facility, the Secretary may award grants to one or more of those institutions, agencies, or facilities.

(Sec. 513(a)(6); 20 U.S.C. 1103(a)(6))

§ 793.107 Time period before correctional facility may apply for a new project.

If a correctional facility participates in a project, it may not apply for a new project until three years after the end of that participation.

(Sec. 513(a)(6); 20 U.S.C. 1103(a)(6))

§ 793.108 Correctional facility functions.

A correctional facility may perform the following functions under its grant:

(a) Recruiting, selecting, and enrolling Teacher Corps members.

(b) Training Teacher Corps members.

(c) Paying the compensation of Teacher Corps members.

(d) Paying compensation for released time for educational personnel while in training, within the limitations in § 793.92.

(e) Paying the administrative and secretarial costs of the community council.

(f) Project administration, including planning, documentation, evaluation, and dissemination.

§ 793.109 Youth advocacy teacher-intern training.

In addition to the training required under § 793.47 (training program for teacher-interns), a youth advocacy project must include teacher-intern training in a correctional facility where youths are:

(a) Incarcerated; or

(b) Having problems adjusting to traditional educational programs; or

(c) Preparing to return to the school-community environment.

(Sec. 513(a)(6); 20 U.S.C. 1103(a)(6))

Subpart D—Project Administration

§ 793.111 Project director.

(a) Each project must have a project director.

(b) A temporary project director may be appointed at the beginning of the initial project year.

(c) A permanent project director must be appointed before the end of the initial project year.

(Sec. 513(g); 20 U.S.C. 1103(g))

§ 793.112 Compensation of project director and staff.

(a) The project director and other project administrative staff are not Teacher Corps members. They must be employed by a grantee.

(Sec. 513(a); 20 U.S.C. 1103(a))

[43 FR 7524, Feb. 23, 1978, as amended at 45 FR 22539, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 793.113 Employment of project administrative staff.

(a) The project administrative staff must be hired from the grantees' regular employees whenever possible.

(b) A grantee must design its hiring of project administrative staff so that it gives consideration to persons who are broadly representative of the ethnic and cultural characteristics of the community served by the project.

(Sec. 513(g); 20 U.S.C. 1103(g))

§ 793.114 Supervision of Teacher Corps members.

(a) Teacher Corps members are under the direct supervision of the local educational agency to which they are assigned.

(b) Subject to the requirements in §§ 793.81-793.84, (regarding teacher-interns), the local educational agency retains the authority to:

(1) Assign Teacher Corps members within its system;

(2) Transfer Teacher Corps members within its system;

(3) Determine the terms and continuance of the assignment of Teacher Corps members within its system.

(Sec. 516; 20 U.S.C. 1106)

Subpart E—Applications

§ 793.122 Policy board.

An application must include a description of the members, method of selection, and operating procedures of the policy board.

(Sec. 513(g); 20 U.S.C. 1103(g))

§ 793.123 Institution of higher education.

(a) An application must include a description of each institution of higher education, including:

(1) Its degree offerings in education; and

(2) Its pre-service and in-service graduate training program.

(b) An application must also include a description of past and current efforts by the institution of higher education to improve its educational personnel training and retraining programs, and the way those efforts relate to the project.

(Sec. 511(a); 20 U.S.C. 1101(a); Sec. 513(b); 20 U.S.C. 1103(b))

§ 793.124 Project schools.

An application must include: (a) A brief description of each project school, including the size of the educational staff and the relationships among the schools in the feeder system;

(b) A description of past and current efforts to improve each project school, and the way those efforts relate to the projects;

(c) A statement that each project school meets the low-income criterion in § 793.12(b);

(d) A statement that all educational personnel employed by the project schools will be involved in planning and carrying out the project in that school; and

(e) If the project includes more than four teacher-interns, an assurance that the local educational agency will employ all of the teacher-interns who complete their internships.

(f) If the project includes as teacher-interns persons who do not have bachelors degrees, a certification by the local education agency that there are not enough teacher-intern candidates who have bachelors degrees available locally or through use of the national listing of qualified applicants.

(Sec. 511(a); 20 U.S.C. 1101(a); Sec. 513(a)(3); 20 U.S.C. 1103(a)(3))

§ 793.125 Community council.

An application must include:

(a) A description of the temporary community council, including:

(1) The purpose for which the council was originally established;

(2) The boundaries and compositions of the community represented by the council;

(3) The terms of the council members;

(4) The date and methods of election of the council members; and

(5) The number of council members.

(b) A description of the permanent community council, including:

(1) The boundaries and composition of the community represented by the council;

(2) The number of council members;

(3) The terms of the council members;

(4) The date and method of election of the council members; and

(5) The activities to be carried out by the council.

(c) An assurance that the community council participates with the other applicants in planning, carrying out, and evaluating the project.

(Sec. 513(e); 20 U.S.C. 1103(e))

§ 793.126 Correctional facility.

An application for a youth advocacy project must include a description of each correctional facility.

(Sec. 513(e); 20 U.S.C. 1103(e))

§ 793.130 Released time.

A local educational agency which wishes to use grant funds under § 793.92 (released time for educational personnel) must demonstrate in the application that the project is or will be placed in jeopardy by the lack of compensation for released time.

(Sec. 514(f); 20 U.S.C. 1104(f))

§ 793.132 Project activities.

An application must include a description of: (a) The teacher-intern recruitment methods;

(b) The organization of each teacher-intern team in each project school;

(c) The training program for teacher-interns;

(d) The training program for volunteers, teachers, and other educational personnel;

(Sec. 513; 20 U.S.C. 1103)

[43 FR 7524, Feb. 23, 1978, as amended at 45 FR 22539, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 793.133 Youth advocacy projects.

In addition to the other requirements in this subpart, an application for a youth advocacy project must describe:

(a) The persons receiving training in the project in remedial, basic, and secondary education;

(b) The special educational needs of the persons described under paragraph (a) of this section;

(c) How the project is designed to:

(1) Meet the needs of those persons; and

(2) Attract and train educational personnel who provide educational training to juvenile delinquents or youth offenders.

(Sec. 513(a)(6); 20 U.S.C. 1103(a)(6))

§ 793.135 Approval of applications by the State educational agency.

(a) The Secretary may not approve an application submitted under this part unless the State educational agency of the State in which the project is located has approved the application.

(b) [Reserved]

(c) The State educational agency shall approve an application that is:

(1) In conformance with all applicable State laws, rules, and regulations; and

(2) Consistent with overall plans for teacher education in that State.

(Sec. 512 (a)(2), (3), (5); 20 U.S.C. 1103 (a)(2), (3), (5))

[43 FR 7524, Feb. 23, 1978, as amended at 45 FR 22539, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

Subpart F—Evaluation Criteria

§ 793.150 Evaluation procedure.

(a) Applications for grants under this part are evaluated by the Secretary on the basis of the criteria in this subpart. The criteria in § 100a.26(b) of this chapter do not apply.

(b) Each application for initial project funding is evaluated in competition with all other applications for initial project funding.

(c) Each application for a continuation grant is evaluated noncompetitively based on the effectiveness of the project and the availability of appropriations.

(d) The evaluation of applications for initial project funding is based on a point system. Each criterion is weighted as indicated. The highest possible score under these criteria is 100 points.

(Sec. 513(g); 20 U.S.C. 1103(g))

§ 793.151 School learning climate criterion (25 points).

In evaluating an application the Secretary considers the extent to which:

(a) The objectives developed under § 793.62 (school objectives) (improved school climate) are likely to achieve the outcomes in § 793.60(a) (8 points);

(b) The project activities are likely to accomplish the objectives developed under § 793.62 (9 points); and

(c) The management plan for accomplishing the objectives developed under § 793.62 is realistic and economical. (8 points).

(Sec. 513(g); 20 U.S.C. 1103(g))

§ 793.152 Educational personnel development system criterion (36 points).

In evaluating an application, the Secretary considers the extent to which:

(a) The objectives developed under § 793.63 (educational personnel development) are likely to achieve the outcome in § 793.60(b) (improved educational personnel development system) (9 points);

(b) The project training activities are likely to accomplish the objectives developed under § 793.63 (b) (improved educational personnel development system) (9 points);

(c) The project activities are likely to accomplish the objectives developed under § 793.63(a) and (c) (9 points); and

(d) The management plan for accomplishing the objectives developed under § 793.63 is realistic and economical (9 points).

(Sec. 513(g); 20 U.S.C. 1103(g))

§ 793.153 Institutionalization criterion (21 points).

In evaluating an application, the Secretary considers the extent to which:

(a) The objectives developed under § 793.64 (institutionalization) are likely to achieve the outcome in § 793.60(c) (continuation of educational improvements) (7 points);

(b) The project activities are likely to accomplish the objectives developed under § 793.64 (8 points); and

(c) The management plan for accomplishing the objectives developed under § 793.64 is realistic and economical (6 points).

(Sec. 513(g); 20 U.S.C. 1103(g))

§ 793.154 Adaptation of educational improvements criterion (18 points).

In evaluating an application, the Secretary considers the extent to which:

(a) The objectives developed under § 793.65 (demonstration and dissemination) are likely to achieve the outcome in § 793.60(d) (adaptation of educational improvements) (6 points);

(b) The project activities are likely to accomplish the objectives developed under § 793.65 (6 points); and

(c) The management plan for achieving the objectives developed under § 793.65 is realistic and economical (6 points).

(Sec. 513(g); 20 U.S.C. 1103(g))

APPENDIX—PART A OF TITLE V OF THE HIGHER EDUCATION ACT OF 1965, AS AMENDED—TEACHER CORPS PROGRAM STATEMENT OF PURPOSE AND AUTHORIZATION OF APPROPRIATIONS

SEC. 511. (a) The purpose of this part is to strengthen the educational opportunities available to children in areas having concentrations of low-income families and to encourage colleges and universities to broaden their programs of teacher preparation and to encourage institutions of higher education and local educational agencies to improve programs of training and retraining for teachers, teacher aides, and other educational personnel by—

(1) Attracting and training qualified teachers who will be made available to local educational agencies for teaching in such areas;

(2) Attracting and training inexperienced teacher-interns who will be made available for teaching and in-service training to local educational agencies in such areas in teams led by an experienced teacher;

(3) Attracting volunteers to serve as part-time tutors or full-time instructional assistants in programs carried out by local educational agencies and institutions of higher education serving such areas;

(4) Attracting and training educational personnel to provide relevant remedial, basic, and secondary educational training, including literacy and communications skills, for juvenile delinquents, youth offenders, and adult criminal offenders;

(5) Supporting demonstration projects for retraining experienced teachers, teacher aides, and other educational personnel serving in local educational agencies.

(b) For the purpose of carrying out the provisions of this part there are authorized to be appropriated $50,000,000 for the fiscal year 1977, $75,000,000 for the fiscal year 1978, and $100,000,000 for the fiscal year 1979.

ESTABLISHMENT OF TEACHER CORPS

SEC. 512. In order to carry out the purposes of this part, there is hereby established in the Office of Education a Teacher Corps. The Teacher Corps shall be headed by a Director who shall be compensated at the rate prescribed for grade 17 of the General Schedule of the Classification Act of 1949, and a Deputy Director who shall be compensated at the rate prescribed for grade 16 of such General Schedule. The Director and the Deputy Director shall perform such duties as are delegated to them by the Commissioner; except that (1) the Commissioner may delegate his functions under this part only to the Director, and (2) the Director and Deputy Director shall not be given any function authorized by law other than that granted by this part.

TEACHER CORPS PROGRAM

SEC. 513. (a) For the purpose of carrying out this part, the Commissioner is authorized to--

(1) Enter into contracts or other arrangements with institutions of higher education or local educational agencies under which they will recruit, select, and enroll in the Teacher Corps for periods of up to five years, experienced teachers, teacher aides, and other educational personnel, persons who have a bachelor's degree or its equivalent, and persons who have successfully completed two years of a program for which credit is given toward a baccalaureate degree and, for such periods as the Commissioner may prescribe by regulation, persons who volunteer to serve as part-time tutors or full-time instructional assistants;

(2) Enter into arrangements, through grants or contracts, with institutions of higher education or local educational agencies (upon approval in either case by the appropriate State educational agency) or with State educational agencies to provide members of the Teacher Corps with such training as the Commissioner may deem appropriate to carry out the purpose of this part, including not more than three months of training for members before they undertake their teaching duties under this part;

(3) Enter into arrangements (including the payment of the cost of such arrangements) with local educational agencies upon approval by the appropriate State educational agency and, after consultation in appropriate cases with institutions of higher education, to furnish to local educational agencies, for service during regular or summer sessions, or both, in the schools of such agencies in areas having concentrations of children from low-income families, Teacher Corps programs each of which shall include teacher-interns teams lead by experienced teachers, and may include additional experienced teachers, teacher aides, and other educational personnel, who may be afforded time by the local educational agency for a training program carried out in coöperation with an institution of higher education;

(4) Pay to local educational agencies such part of the amount of the compensation which such agencies pay to or on behalf of members of the Teacher Corps assigned to them pursuant to arrangements made pursuant to the preceding clause as may be agreed upon after consideration of their ability to pay such compensation, but not in excess of 90 per centum thereof, except that, in exceptional cases, the Commissioner may provide more than 90 per centum of such compensation during the first year of any agency's participation in the program;

(5) Enter into contracts or other arrangements with local educational agencies or institutions of higher education, upon approval by the appropriate State educational agency, under which provisions (including payment of the cost of such arrangements) will be made (A) to carry out programs serving disadvantaged areas in which volunteers (including high school and college students) serve as part-time tutors or full-time instructional assistants in teams with other Teacher Corps members, under the guidance of experienced teachers, but not in excess of 90 per centum of the cost of compensation for such tutors and instructional assistants may be paid from federal funds, and (B) to provide appropriate training to prepare tutors and instructional assistants for service in such programs;

(6) Enter into arrangements, through grants or contracts, with State and local educational agencies, and with institutions of higher education, and such other agencies or institutions approved by the Commissioner according to criteria which shall be established by him to carry out the pur-

poses of this paragraph, under which provisions (including payments of the cost of such arrangements) will be made to furnish to such agencies members of the Teacher Corps to carry out projects designed to meet the special educational needs of juvenile delinquents, youth offenders, and adult criminal offenders, and persons who have been determined by a State or local educational agency, court of law, law enforcement agency or any other State or local public agency to be predelinquent juveniles, but not in excess of 90 per centum of the cost of compensation for Teacher Corps members serving in such projects may be paid from Federal funds;

(7) (A) Make available technical assistance to State and local educational agencies and institutions of higher education for carrying out arrangements entered into under this title; and

(B) Provide planning, technical assistance, monitoring, documenting, dissemination, and evaluation services for arrangements made under this title;

(8) Acquaint qualified persons of teaching opportunities and needs in disadvantaged areas and encourage qualified persons to apply to appropriate educational agencies or institutions for enrollment in the Teacher Corps; and

(9) Accept and employ in the furtherance of the purposes of this subpart (A) voluntary and uncompensated services notwithstanding the provisions of section 3679(b) of the Revised Statutes, as amended (31 U.S.C. 665(b)), and (B) any money or property (real, personal, or mixed, tangible or intangible) received by gift, device [sic,] bequest, or otherwise.

(b) Arrangements with institutions of higher education to provide training for Teacher Corps members while serving in schools for local educational agencies under the provisions of this part shall provide, wherever possible, for training leading to an appropriate degree.

(c) (1) Whenever the Commissioner determines that the demand for the services of members of the Teacher Corps exceeds the number available, he shall, to the extent practicable, allocate the number of members of the Teacher Corps who are available among the States in accordance with paragraph (2).

(2) Not to exceed 5 per centum of the number of members of the Teacher Corps who are available shall be allocated to Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands and not to exceed 5 per centum of such members shall be allocated to the elementary and secondary schools operated for Indian children by the Department of Interior, according to their respective needs. The remainder of such number of Teacher Corps members shall be allocated among the States so that the number of members available to any State shall bear the same ratio to the number being allocated as the number of children enrolled in the public and private elementary and secondary schools of that State bears to the total number of children so enrolled in all of the States. The number of children so enrolled shall be determined by the Commissioner on the basis of the most recent satisfactory data available to him. For purposes of this subsection, the term "State" shall not include Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands.

(3) If the Commissioner determines that a State will not require the number of Teacher Corps members allocated to it under paragraph (2), he shall, from time to time, reallot the number not required, on such dates as he may fix, to other States in proportion to the original allocation to such States under paragraph (2), but with such proportionate number for any of such other States being reduced to the extent it exceeds the number the Commissioner determines such State needs and will be able to use for such year; and the total of such reductions shall be similarly reallocated among the States whose proportionate numbers were not so reduced.

(d) A local educational agency may utilize members of the Teacher Corps assigned to it in providing, in the manner described in section 205(a) (2) of Pub. L. 874, Eighty-first Congress, as amended, educational services in which children enrolled in private elementary and secondary schools can participate.

(e) (1) No arrangement may be entered into under the provisions of paragraph (1), (2), (3), (5), or (6) of subsection (a) of this section unless that arrangement is prepared with the participation of an elected council which shall be representative of the community in which the project subject to that arrangement is located and of the parents of the students of the elementary or secondary schools or both, to be served by such project.

(2) Each council selected pursuant to this subsection shall participate with the local educational agency or institution of higher education, or both, in the planning, carrying out, and evaluation of projects subject to arrangements under paragraphs (1), (2), (3), (5), and (6) of subsection (a) of this section.

(3) The Commissioner is authorized in each fiscal year to arrange for the payment of necessary secretarial and administration expenses of each council elected pursuant to the provisions of this subsection for the purposes of carrying out its functions under this subsection.

(f) The Commissioner shall establish procedures seeking, with respect to the Teacher

Corps members enrolled after the date of enactment of the Education Amendments of 1976, [a] goal of having approximately five individuals who are at the time of enrollment, or who previously have been, employed as teachers by local educational agencies to one individual who has not been so employed. The Commissioner may waive the procedure established under this subsection if he makes a determination that there are insufficient qualified applicants to maintain the goal sought by this subsection, or that there are insufficient employment opportunities for individuals who are not so employed, and submits a report to the Congress of such a determination.

(g) Notwithstanding any other provision of law, the Commissioner shall develop and establish specific criteria for entering into arrangements under this part in order to assist applicants for assistance under this part to develop proposals to be submitted. Criteria established under this subsection shall be used by the Commissioner in selecting proposals under this title.

COMPENSATION

SEC. 514. (a) An arrangement made with a local educational agency pursuant to paragraph (3) of section 513 (a) or arrangement with a local educational agency or institution of higher education pursuant to paragraph (5) of section 513(a), or an arrangement with any agency pursuant to paragraph (6) of section 513(a), shall provide for compensation by such agency of Teacher Corps member during the period of their assignment to it at the following rates:

(1) An experienced teacher who is leading a teaching team shall be compensated at a rate agreed to by such agency and the Commissioner.

(2) A teacher intern shall be compensated at such rates as the Commissioner may determine to be consistent with the nature of the program and with prevailing practices under comparable federally supported programs or local projects, not to exceed $150 per week plus $15 per week for each dependent; and

(3) Tutors and instructional assistants shall be compensated at such rates as the Commissioner may determine to be consistent with prevailing practices under comparable federally supported work-study programs.

(b) For any period of training under this part the Commissioner shall pay to members of the Teacher Corps such stipends (including allowances for subsistence and other expenses for such members and their dependents) as he may determine to be consistent with prevailing practices under comparable federally supported training programs.

(c) The Commissioner shall pay the necessary travel expenses of members of the Teacher Corps and their dependents and necessary expenses for the transportation of the household goods and personnel effects of such members and their dependents, and such other necessary expenses of such members as are directly related to their services in the Corps, including readjustment allowances proportionate to service.

(d) The Commissioner is authorized to make such arrangements as may be possible, including the payment of any costs incident thereto, to protect the tenure, retirement rights, participation in a medical insurance program, and such other similar employee benefits as the Commissioner deems appropriate, of a member of the Teacher Corps who participates in any program under this part and who indicates his intention to return to the local educational agency or institution of higher education by which he was employed immediately prior to his service under this part.

(e) The Commissioner is authorized to provide medical (including hospitalization) insurance for members of the Teacher Corps who do not otherwise obtain such insurance coverage either under an arrangement made pursuant to subsection (d) of this section or as an incident of an arrangement between the Commissioner and an institution or a State or local educational agency pursuant to section 513.

(f) The Commissioner is authorized to compensate local educational agencies for released time for educational personnel of the agency who are being trained in Teacher Corps projects assisted under this title.

APPLICATION OF PROVISIONS OF FEDERAL LAW

SEC. 515. (a) Except as otherwise specifically provided in this section, a member of the Teacher Corps shall be deemed not to be a Federal employee and shall not be subject to the provisions of laws relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

NOTE: Subsection (b) was repealed by Pub. L. 90-83.

(c) Such members shall be deemed to be employees of the Government for the purposes of the Federal tort claims provisions of title 28, United States Code.

(d) Members of the Teacher Corps shall not be eligible to receive payment of a student loan under title II of the National Defense Education Act of 1958 or of an educational opportunity grant under title IV of this Act.

LOCAL CONTROL PRESERVED

SEC. 516. Members of the Teacher Corps shall be under the direct supervision of the appropriate officials of the local educational agencies to which they are assigned. Except as otherwise provided in clause (3) of section 513(a), such agencies shall retain the authority to—

(1) Assign such members within their systems;

(2) Make transfers within their systems;

(3) Determine the subject matter to be taught;

(4) Determine the terms and continuance of the assignment of such members within their systems.

MAINTENANCE OF EFFORT

SEC. 517. No member of the Teacher Corps shall be furnished to any local educational agency under the provisions of this part if such agency will use such member to replace any teacher who is or would otherwise be employed by such agency.

TEACHING CHILDREN OF MIGRATORY AGRICULTURE WORKERS

SEC. 517A. For purposes of this part the term "local educational agency" includes any State educational agency or other public or private nonprofit agency which provides a program or project designed to meet the special educational needs of migratory children of migratory agricultural workers, and any reference in this part to (1) teaching in the schools of a local educational agency includes teaching in any such program or project and (2) "migratory children of migratory agricultural workers" shall be deemed to continue to refer to such children for a period, not in excess of five years, during which they reside in the area served by the local educational agency.

PART 795—STATE DISSEMINATION GRANTS PROGRAM

Sec.
795.1 Regulations that apply to the State Dissemination Grants Program.
795.2 Purpose.
795.3 Definitions.
795.4 Applicant eligibility.
795.5 Types of awards; funding requirements.
795.6 Evaluation criteria.

AUTHORITY: Secs. 405 and 408(a)(1) of the General Education Provisions Act, as amended (20 U.S.C. 1221e), unless otherwise noted.

§ 795.1 Regulations that apply to the State Dissemination Grants Program.

(a) *Regulations.* The following regulations apply to the State Dissemination Grants Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and Part 77 (Definitions).

(2) The general provisions for ED grants in 34 CFR Parts 700-702.

(3) The regulations in this Part 795.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Department" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Department programs; and

(2) Applying for assistance under a Department program.

(20 U.S.C. 1221e-3(a)(1))

[45 FR 22545, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980, and amended at 45 FR 86301, Dec. 30, 1980]

§ 795.2 Purpose.

The State Dissemination Grants Program will make awards to support State educational agencies (SEA's) that wish to establish or enhance their dissemination activities related to utilization of the results of educational research and of new and improved knowledge, products, and practices in education. It is expected that the awards will result in several benefits to SEA's and to the national education dissemination capacity, including an:

(a) Increase in the number of practitioners who have convenient access to knowledge resources;

(b) Increase in the exchange of information between knowledge producers and knowledge users;

(c) Increase in the capacity of SEA's to facilitate knowledge utilization by their constituents through:

(1) Systematic efforts to improve generalized dissemination capacity for serving education communities within the States and

(2) Planning and short-range development efforts to establish a generalized dissemination capacity in the SEA;

(d) Increase in general understanding of effective dissemination functions in SEA's.

[40 FR 25454, June 16, 1975. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 795.3 Definitions.

As used in this part:

"Inter-State project" means a set of activities assisted under this part designed to develop or improve the dissemination programs of State educational agencies in more than one State and in which the SEA's collaborate to achieve common objectives.

"Intra-State project" means a set of activities assisted under this part designed to develop or improve the dissemination program of a single SEA.

[40 FR 25454, June 16, 1975, as amended at 45 FR 22545, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 795.4 Applicant eligibility.

(a) [Reserved]

(b) Only SEA's are eligible for grants made pursuant to this part.

(c) A State educational agency (SEA) may submit as many applications as it wishes for intra-State projects but may submit or (under paragraph (d)(1)(i) of this section) participate in only one inter-State project application.

(d)(1) With respect to inter-State projects which are to be substantially carried out by only one SEA, the SEA proposing to carry out the project shall submit an application to the Secretary which documents: (i) A commitment to participate in the project by the SEA for each State to be served by the project and (ii) the manner in which each such SEA will participate in the project.

(2) Participation by SEA's other than the SEA-applicant (or grantee) in a project subject to this paragraph may include, but need not be limited to, the receipt of activities or services provided by the applicant (or grantee) SEA such as planning and conducting dissemination activities in the State, training for SEA staff, and technical assistance.

(e) [Reserved]

(f)(1) An SEA will receive no more than one award (including any joint award) under each application notice published under § 75.100 of EDGAR.

(2) An SEA that receives an intra-State award may also participate in one inter-State award to another SEA, as provided in paragraph (d)(1)(i) of this section, under each application notice published under § 75.100 of EDGAR.

(g) [Reserved]

(h) Any SEA that submits more than one application under paragraph (c) of this section—or that both submits an application or applications and participates in another application submitted by another SEA under paragraph (d) of this section—must rank all of the applications in priority order.

[40 FR 25454, June 16, 1975, as amended at 45 FR 22545, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980]

§ 795.5 Types of awards; funding requirements.

Two types of awards will be made pursuant to this part: Capacity Building Grants and Special Purpose Grants.

(a) *Capacity Building Grants.* (1) These are awards to develop or enhance a comprehensive SEA program for the dissemination of the findings of educational research and of new and improved practices and products in education, subject to the funding requirements in paragraphs (a)(2) through (7) of this section.

(2) An SEA may take one of two approaches in its application for a Capacity Building Grant:

(i) A general approach which, from the beginning of the project, attempts to provide all potential clients with access to whatever resources they need, or

(ii) An approach which builds general capacity from a base of specialized services. For example, a project might initially serve only science teachers and gradually expand project scope to serve all education practitioners. In another case, services might initially be limited to providing only information drawn from publications but then be expanded to provide a full range of information based on documents, data, products, and practices.

(3) Applications for awards under this paragraph must contain:

(i) A comprehensive dissemination project plan which covers a three to five year period, although each award will be for a one-year grant period. References to "project" or to "project period" in connection with Capacity Building grants under this paragraph and paragraph (a) of § 795.6 refer to activities to be carried out over the three to five year period specified in the project plan required by this subparagraph;

(ii) A funding pattern which provides for the gradual increase of State support, with full State assumption of all costs at the end of the project period.

(4)(i) Funds will be awarded only to build capacity for dissemination activities which supplement current State dissemination operations. Support will not be provided for the maintenance of existing dissemination activities.

(ii) Applications must demonstrate that the proposed project will supplement the State's current dissemination activities by identifying:

(A) Relevant resources already available;

(B) How these resources will be utilized to improve dissemination services;

(C) How grant funds will be used to complement existing resources to achieve specified project objectives; and

(D) How the new dissemination program resulting from the project will be incorporated into the existing SEA structure.

(5) Proposed objectives set forth in the project plan required by paragraph (a)(3) of this section must be attainable and stated in operational terms, with reference to such elements as the type of dissemination services to be developed, the quantity of services, and the target populations to whom the services will be rendered.

(6) Each capacity building award will be for a one-year funding period, as part of the three-to-five year plan submitted by the applicant pursuant to paragraph (a)(3) of this section. Subject to the project period provided for in such plans, continuation awards may be made to a grantee depending upon the availability of funds, project performance, and continued need of the grantee for assistance under this part.

(7) Each application must show an SEA contribution, in funds or in kind, to be included from the commencement of the project, in accordance with 34 CFR Part 74.

(b) *Special purpose grants.* These are awards (generally not to exceed one year in duration) to support relatively low-cost, one-time efforts to deal with specific dissemination problems, subject to the provisions of paragraphs (b)(1) through (3) of this section. Examples of special purpose projects include training for key staff in necessary dissemination skills and development of a comprehensive State dissemination plan.

(1) Awards shall not support the salaries of full-time professional or clerical staff.

(2) Salary cost of regular SEA staff properly attributable to the carrying out of the project will be considered an in kind SEA contribution to the project, in accordance with Part 74 of this title.

(3) Ad hoc employment of consultants or other short term personnel is an allowable expense.

(c) *Funds allocated between types of awards.* The Secretary will allocate available funds between the two types of awards described in paragraphs (a) and (b) of this section on the basis of the quantity and quality of applications received.

[40 FR 25454, June 16, 1975, as amended at 45 FR 22545, Apr. 3, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980, and amended at 45 FR 86301, Dec. 30, 1980]

§ 795.6 Evaluation criteria.

Applications for assistance under this part will be evaluated in accordance with the criteria and procedures described below. The relative weight of each of the major evaluation criteria is indicated by the points assigned.

(a) *Capacity building grants (potential score—200 points).* (1) Significance of the proposed project (0–50 points), as measured by the following factors:

(i) The likely contribution of the project to the improvement of educational practice or the resolution of significant educational problems in the State;

(ii) The likely progress toward achieving SEA objectives for a comprehensive dissemination capacity;

(iii) The contribution which the proposed project is expected to make toward improving equality of educational opportunity in the State;

(iv) The aid that the proposed project will give users in rational consideration of alternative approaches to improving educational practice or solving educational problems;

(v) The potential contributions of the project to general knowledge or understanding of effective educational dissemination practice;

(2) Technical adequacy of the work plan (0-75 points), as measured by the following factors:

(i) The extent to which the application relates proposed activities to pertinent dissemination theory and practice;

(ii) The clarity and explicitness of the statement of project objectives;

(iii) The logic and rationale for selecting these objectives;

(iv) The probable attainability of these objectives;

(v) The appropriateness of the proposed activities to the objectives of the SEA dissemination project and to the purposes of the State Dissemination Grants program as specified in § 795.2;

(vi) The soundness of the management plan and time schedule; and

(vii) The appropriateness of SEA reporting and evaluation procedures.

(3) Capability of the SEA to perform the proposed activites (0-50 points), as measured by the following factors:

(i) The qualifications of proposed project staff with respect to training and relevant experience;

(ii) The quality of discussion and analysis in the application; and

(iii) The adequacy of the SEA commitment and arrangements [illegible] the project in terms of plans for:

(A) The use of State funds in combination with Federal funds;

(B) The continuation of proposed dissemination activities after the expiration of Federal funds; and

(C) Administration and organization of the project within the SEA.

(4) Reasonableness of the budget for the work to be done in light of anticipated benefits (0-25 points).

(b) *Special Purpose Grants (potential score—100 points)*. (1) Significance of the project (0-25 points), as measured by the following factors:

(i) The likely magnitude of the improvement in State dissemination activities or readiness;

(ii) The likely contribution of the project to the improvement of educational practice or the resolution of significant educational problems in the State; and

(iii) The contribution the project is expected to make to:

(A) General understanding of effective educational dissemination practice or

(B) Improvement of the equality of educational opportunity.

(2) The technical adequacy of the work plan (0-40 points), as measured by the following factors:

(i) The appropriateness of proposed activities to the objectives of the project and to the purposes of the State Dissemination Grants Program as specified in § 795.2;

(ii) The soundness of the management plan and time schedule;

(iii) The appropriateness of State reporting and evaluation procedures; and

(iv) The extent to which the application, particularly in proposed approach, exhibits knowledge of, and relates proposed activities to, pertinent dissemination theory and practice.

(3) The capability of the SEA to perform proposed activities (0-20 points), as measured by the following factors:

(i) The qualifications of project staff with respect to training and relevant experience and

(ii) The adequacy of SEA resources and commitment.

(4) Reasonableness of the budget for the work to be done in light of anticipated results (0-15 points).

(c) *Review procedures.* (1) All applications submitted in accordance with this part will be evaluated by the Secretary through officers and employees of the Department. In this evaluation, the Secretary will also seek the expert opinion of employees of other agencies and organizations, such as State educational agencies, academic institutions, and professional associations, including representatives of women's and minority groups and of the educationally disadvantaged. Final determinations on awards will be made by the Secretary.

(2) In evaluating applications, the Secretary will first consider the technical merits of the proposed projects in accordance with the evaluation criteria set forth in paragraphs (a) and (b) of this section. In the case of any SEA for which more than one application has been found to be technically qualified, the Secretary will then consider the priority rankings submitted pursuant to § 795.4(h).

(d) *Inapplicability of general provisions criteria.* Criteria for review of applications set forth in § 701.10(b) of this chapter shall be inapplicable to applications submitted pursuant to this part.

[40 FR 25454, June 16, 1975. Redesignated at 45 FR 77369, Nov. 21, 1980]

PART 796—NATIONAL DIFFUSION NETWORK

Subpart A—General

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796.31 How does the Secretary evaluate an application for a Developer/Demonstrator or a Facilitator grant?
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796.33 What selection criteria does the Secretary use to review a Facilitator application?

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796.41 Are there restrictions on the kinds of items a grant may support?
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AUTHORITY: Secs. 303 and 376 of Title III of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978 (Pub. L. 95-561), 92 Stat. 2210-2222 (20 U.S.C. 2943, 3041), unless otherwise noted.

SOURCE: 45 FR 26917, Apr. 21, 1980, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

Subpart A—General

§ 796.1 What is the National Diffusion Network (NDN)?

The National Diffusion Network (NDN) funds activities designed to promote across the Nation the widespread use of exemplary educational programs by providers of educational services. The NDN is designed—

(a) To acquaint these providers with information on exemplary educational programs; and

(b) To help these providers adopt the exemplary program through training and technical assistance.

(20 U.S.C. 2943, 3041)

§ 796.2 What regulations apply to the NDN?

(a) *Regulations.* The following regulations apply to the NDN:

(1) The Education Department General Administrative Regulations (EDGAR) in Part 75 (Direct Grant Programs) and Part 77 (Definitions).

(2) The regulations in this part.

(b) *Exceptions to EDGAR.* Section 75.650, Participation of students enrolled in private schools, does not apply to this program. (However, see § 796.42 in this part, which governs this participation.)

(c) *How to use regulations.* The "Introduction to Department Programs" at the beginning of EDGAR includes general information to assist in using regulations that apply to Department programs.

§ 796.3 What definitions apply to the NDN?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in Part 77:

Applicant
Application
Department
Facilities
Local educational agency (LEA)
Nonprofit
Project
Private
Public
State educational agency (SEA)

(b) *Definitions in 34 CFR Part 74.* The following terms used in this part are defined in 34 CFR Part 74:

Equipment
Grantee

(c) *Program specific definitions.* The following definitions apply specifically to this program:

"Adoption" or "Adopt" means the use of all the essential characteristics of an exemplary educational program by a provider of educational services.

"Exemplary educational program" means a program, product, or practice validated by the Joint Dissemination Review Panel (JDRP).

"General Content Area" refers to educational subject areas such as basic skills, and instructional levels such as elementary or adult.

"Proposed Program" means a program, product, or practice that has not been approved by the JDRP.

"Provider of educational services" means any public or nonprofit private agency or organization responsible for the provision of educational services. Included are State educational agencies (SEAs), local educational agencies (LEAs), nonprofit private educational agencies, public or nonprofit private institutions of higher education.

(20 U.S.C. 2943, 3041)

Subpart B—What Kinds of Projects Does the Department (ED) Assist Under This Program?

§ 796.11 What kinds of projects does the NDN assist?

The National Diffusion Network assists two types of projects:

(a) Developer/Demonstrator Projects—disseminate a specific exemplary educational program nationwide.

(b) Facilitator Projects—disseminate a wide variety of exemplary educational programs within the particular State or intrastate region served.

(20 U.S.C. 2943, 3041)

§ 796.12 What activities must a Developer/Demonstrator project conduct?

A Developer/Demonstrator Project must—

(a) Disseminate throughout the nation information about the exemplary educational program it developed or represents;

(b) Develop materials for providers of educational services to use in deciding whether to adopt the exemplary educational program;

(c) Refine, produce, and package instructional, management, and training plans and materials;

(d) Provide training and technical assistance in the preparation, implementation, and evaluation stages of an exemplary educational program adoption;

(e) Monitor and evaluate the quality and effectiveness of the activities listed under paragraphs (a), (b), (c), and (d) of this section, and the quality and effectiveness of the resulting exemplary educational program adoptions;

(f) Participate with other National Diffusion Network grantees in workshops and meetings arranged by the Secretary; and

(g) Cooperate with Facilitator Project grantees in carrying out the activities under paragraphs (a), (d), and (e) of this section.

(20 U.S.C. 2943, 3041)

§ 796.13 Developer/Demonstrator Project: Approval and reapproval by JDRP of exemplary educational programs.

(a) The procedures involved in JDRP approval follow:

(1) (i) If the proposed program was developed with Department funds, an applicant submits the proposed program and supporting evidence to the Department program office that funded its development or to the Department, National Diffusion Network Division.

(ii) If the proposed program was not developed with Department funds, an applicant submits the proposed program and supporting evidence to the National Diffusion Network Division.

(2) The Department office that receives the proposed program—

(i) Reviews it for accuracy, and social fairness (e.g., freedom from race and sex role stereotyping), and quality of evaluation design;

(ii) Determines that there is no potential for educational harm to students; and

(iii) If the proposed program is acceptable under paragraphs (a)(2) (i) and (ii) of this section, transmits the proposed program to the JDRP.

(3) The JDRP looks for the following in evaluating a proposed program:

(i) Is there evidence demonstrating that the proposed program attained its stated outcomes?

(ii) Can the outcomes reasonably be attributed to the proposed program?

(iii) Is there evidence that the proposed program can be adopted by other providers of educational services and benefit their clients?

(b) For the purposes of the NDN—

(1) JDRP approval granted on or before September 30, 1980, remains in effect for a four-year period beginning October 1, 1980; and

(2) JDRP approval granted after September 30, 1980, remains in effect for a four-year period from the date of approval.

(c) JDRP may reapprove a program as an exemplary educational program. Programs submitted by the original developer for JDRP reapproval must—

(1) Be subject to all of the initial review procedures in paragraph (a) of this section; and

(2) Provide evidence that program adoptions have attained the outcomes originally stated by the developer.

(20 U.S.C. 2943, 3041)

§ 796.14 Who is eligible to apply for a Developer/Demonstrator grant?

(a) An application may be submitted by any public or nonprofit private agency, organization, or institution that has developed an exemplary educational program.

(b) If the agency that developed the exemplary educational program does not apply, another public or nonprofit private agency, organization, or institution may apply if the exemplary educational program continues in operation, is available for visitation, and if the staff is composed substantially of personnel who originally developed and operated the program.

(c) Both federally and non-federally developed exemplary educational programs are eligible for NDN funding.

(20 U.S.C. 2943, 3041)

§ 796.15 Will priorities for funding Developer/Demonstrator grants be established?

(a) In any given year, through a notice published in the FEDERAL REGISTER, the Secretary may select general content areas for funding from among the following 12 categories:

(1) Adult education.

(2) Alternative schools/programs.

(3) Bilingual/migrant education.

(4) Career/vocational education.

(5) Early childhood/parent readiness/parent involvement.

(6) Environmental education/science/social science.

(7) Organizational arrangements/administration.

(8) Preservice/inservice training.

(9) Reading/language arts/mathematics.

(10) Special education/learning disabilities.

(11) Arts/gifted and talented education.

(12) Communication/technology/health/human behavior/physical education.

(b) The Secretary selects general content areas taking into consideration any unmet national needs in the general content areas under paragraph (a) of this section.

(c) If the Secretary selects general content areas, the Secretary selects applications for new grants under each general content area separately.

(20 U.S.C. 2943, 3041)

§ 796.16 What activities must a Facilitator Project conduct?

A Facilitator Project must—

(a) Inform providers of educational services about the availability of exemplary educational programs, whether or not those programs are funded by the NDN;

(b) Assist providers of educational services—

(1) In identifying and assessing their needs, and

(2) In matching those needs with exemplary educational programs;

(c) Arrange for interested providers of educational services to visit sites of Developer/Demonstrator projects if appropriate;

(d) Arrange for Developer/Demonstrator projects to train staff members of providers of educational services that choose to adopt the exemplary educational program;

(e) Monitor and evaluate the quality and effectiveness of the activities listed under paragraphs (a), (b), (c), and (d) of this section, and the quality and effectiveness of the dissemination process;

(f) Identify and encourage the submission to the JDRP of proposed programs developed within the State or intrastate region served;

(g) Participate with other NDN grantees in workshops and meetings arranged by the Secretary; and

(h) Cooperate with Developer/Demonstrator grantees in carrying out the activities under paragraphs (a), (c), (d), and (e) of this section.

(20 U.S.C. 2942, 3041)

§ 796.17 Who is eligible to apply for a Facilitator grant?

Applications for Facilitator grants may be submitted by any public or nonprofit private agency, organization, or institution located in the State or intrastate region to be served.

(20 U.S.C. 2943, 3041)

Subpart C—How to Apply for a Grant—[Reserved]

NOTE: EDGAR establishes the regulations for submission of applications. See, generally, 34 CFR 75.100-75.192.

Subpart D—How is a Grant Made?

§ 796.31 How does the Secretary evaluate an application for a Developer/Demonstrator or a Facilitator grant?

(a) The Secretary evaluates an application—

(1) For a Developer/Demonstrator grant on the basis of the criteria in § 796.32; and

(2) For a Facilitator grant on the basis of the criteria in § 796.33.

(b) The Secretary awards up to 100 possible points under both—

(1) The Developer/Demonstrator criteria; and

(2) The Facilitator criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses.

(d) The criteria in §§ 796.32 and 796.33 apply to applications for new grants made under appropriations for fiscal year 1981 and succeeding fiscal years.

§ 796.32 What selection criteria does the Secretary use to review a Developer/Demonstrator application?

(a) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons;

(D) The elderly; and

(vi) If the applicant is a local educational agency or State educational agency, a clear description of how the applicant will satisfy the applicable requirements for consultation with private school officials and opportunity for participation by private school children as stated in § 796.42.

(b) *Quality of Key personnel.* (15 points).

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section, plans to commit to the project; and

(iv) The extent to which the applicant, as part of its non-discriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See § 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (4 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Monitoring.* (20 points)

The Secretary looks for information that shows the extent to which the applicant clearly details plans that show promise of effective postadoption monitoring and evaluation of program implementation and resulting benefits at the adoption sites.

(g) *Access to sites.* (6 points)

The Secretary looks for information that shows the extent to which the applicant provides for access to the developer site or developer-approved sites for potential adopters to see the program in operation.

(h) *Innovative dissemination.* (10 points)

The Secretary looks for information that shows the extent to which the applicant proposes innovative dissemination strategies that may be used by other NDN grantees.

(20 U.S.C. 2943, 3041)

§ 796.33 What selection criteria does the Secretary use to review a Facilitator application?

(a) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program; and

(iv) The way the applicant plans to use its resources and personnel to achieve each objective.

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its non-discriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See § 75.500—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (4 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Consultation during application.* (5 points)

The Secretary looks for information that shows the extent to which the applicant, in developing its application has consulted with SEAs and LEAs, nonprofit private elementary and secondary schools, and other providers of educational services in the State or intrastate region to be served; and

(g) *Consultation during project.* (5 points)

The Secretary looks for information that shows the extent to which the applicants in carrying out project activities, provides for consultation with SEAs and LEAs, nonprofit private elementary and secondary schools, and other providers of educational services in the State or interstate region.

(h) *Monitoring.* (16 points)

The Secretary looks for information that shows the extent to which the applicant clearly details plans to monitor and assist sites that adopt the program.

(i) *Innovative dissemination.* (10 points)

The Secretary looks for information that shows the extent to which the applicant proposes innovative dissemination strategies that may be used by other NDN grantees.

(20 U.S.C. 2943, 3041)

Subpart E—What Conditions Must Be Met By a Grantee?

§ 796.41 Are there restrictions on the kind of items a grant may support?

Funds may not be used for stipends, for education personnel to participate in training activities, construction, repair, remodeling, or alteration of facilities or sites. (See EDGAR § 75.530)

(20 U.S.C. 2943, 3041)

§ 796.42 Nonprofit private school requirements.

(a) A grant to an LEA or SEA is subject to the requirements in Section 302(b) of the Elementary and Secondary Education Act of 1965, as amended, concerning—

(1) Consultation with nonprofit private school officials in developing the application; and

(2) The opportunity for participation by nonprofit private school children. The requirements for consultation are governed by paragraph (b) of this section, and § 76.652 of EDGAR.

(b) *Consultation.* (1) (i) An applicant shall comply with paragraph (b)(1)(ii) of this section if the following conditions are met:

(A) The applicant is an LEA or SEA.

(B) The applicant applies for a Developer/Demonstrator grant.

(C) The project proposed under the application is designed for adoption at elementary and secondary schools.

(ii) The applicant shall consult with officials of nonprofit private elementary and secondary schools to ensure that the project can benefit children in those schools.

(2) (i) An applicant shall comply with paragraph (b)(2)(ii) of this section if the following conditions are met:

(A) The applicant is an LEA or SEA.

(B) the applicant applies for a Facilitator grant.

(ii) The applicant shall consult with officials of nonprofit private elementary and secondary schools in the State or intrastate region served by the project to determine appropriate strategies to ensure that children in those schools can benefit from the project.

(c) *Participation.* (1) An LEA or SEA that receives a Developer/Demonstrator grant designed for adoption at elementary and secondary schools shall—

(i) Based on the consultation under paragraph (b)(1) of this section, ensure that nonprofit private elementary and secondary schools have an opportunity to adopt the program; and

(ii) Ensure that nonprofit private elementary and secondary schools in the area served by an adopter are informed about the opportunities to adopt the program.

(2) An LEA or SEA that receives a Facilitator grant shall use the strategies developed under paragraph (b)(2) of this section to ensure that teachers and administrators from nonprofit private elementary and secondary schools have an opportunity to participate in the project.

(d) An applicant that must comply with paragraph (c) of this section shall include in its application a description of how the applicant will meet the Federal requirements for participation.

(e) An LEA or SEA grantee shall comply with the rules for subgrantees in EDGAR § 76.658, Funds not to benefit a private school.

(20 U.S.C. 2942(b), 2943, 3041)

PART 797—PRE-COLLEGE TEACHER DEVELOPMENT IN SCIENCE PROGRAM

Subpart A—General

Sec.

797.1 Description of the Pre-College Teacher Development in Science Program.
797.2 Eligible institutions.
797.3 Regulations that apply to the Pre-College Teacher Development in Science Program.
797.4 Definitions that apply to the Pre-College Teacher Development in Science Program.

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

797.10 What is the purpose of the program?
797.11 What are the general characteristics of the projects?
797.12 What types of projects are supported?

Subpart C—How Does One Apply for a Grant? [Reserved]

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797.30 How does the Secretary evaluate an application?
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Subpart E—What Conditions Must Be Met by a Grantee?

797.40 Who may participate in the projects?
797.41 What cost principles apply to this program?

AUTHORITY: Pub. L. 81-507; Pub. L. 94-378; Pub. L. 96-88; 42 U.S.C. 1962; 20 U.S.C. 3444, unless otherwise noted.

SOURCE: 45 FR 86373, Dec. 30, 1980, unless otherwise noted.

EFFECTIVE DATE NOTE: At 46 FR 42848, Aug. 25, 1981, Part 797 was removed effective Oct. 1, 1982.

Subpart A—General

§ 797.1 Description of Pre-College Teacher Development in Science Program.

The Pre-College Teacher Development in Science Program offers continuing education in science, to provide in-service training for preschool and elementary school teachers.

(42 U.S.C. 1862)

§ 797.2 Eligible institutions.

The following institutions are eligible to receive grants:

(a) Institutions of higher education that offer at least a baccalaureate degree in science.

(b) Nonprofit private, non-academic institutions having both the scientific research staff and the facilities necessary to provide a quality science education program for pre-college teachers. This may include institutions such as, scientific research laboratories, field stations, museums, or planetariums.

(42 U.S.C. 1862)

§ 797.3 Regulations that apply to the Pre-College Teacher Development in Science Program.

The following regulations apply to the Pre-College Teacher Development in Science Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (Definitions).

(b) The regulations in this Part 797.

(42 U.S.C. 1862; 20 U.S.C. 3444)

[45 FR 86373, DEc. 30, 1980; 46 FR 26057, May 11, 1981]

§ 797.4 Definitions that apply to the Pre-College Teacher Development in Science Program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Award
Department
Elementary school
Fiscal year
Nonprofit
Preschool
Project
Secretary

(20 U.S.C. 1221e-3(a)(1))

(b) *Definitions that apply to this Part.* The following definitions apply to this part:

"Science" means the mathematical, biological, physical, engineering, and social sciences.

(42 U.S.C. 1862)

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 797.10 What is the purpose of the program?

The major objective of the Pre-College Teacher Development in Science Program is to promote the offering of quality science instruction to the Nation's preschool and elementary school students. This is accomplished by—

(a) Improving preschool and elementary school teachers' knowledge of the subject matter of science and their awareness of accompanying appropriate instructional strategies;

(b) Developing and maintaining cooperation and communication between preschool and elementary school teachers and scientists at institutions of higher education and certain other scientific institutions.

(c) Aiding teachers in the identification and use of resources which are appropriate to their level of instruction, and which will aid in their teaching of scientific concepts.

(42 U.S.C. 1862)

[45 FR 86373, Dec. 30, 1980; 46 FR 26057, May 11, 1981]

§ 797.11 What are the general characteristics of the projects?

(a) Projects supported in this program may involve a group of preschool and elementary school teachers engaged in a learning experience sponsored by the grantee institution and staffed by its faculty members or others selected for their expertise.

(b) Project staff site visits for individual consultation, with participants and group meetings devoted to classroom teaching strategies may be used to augment the instructional phase.

(c) Consistent with the needs of an identified group of teachers, projects provide: (1) Instruction on general concepts of science, (2) instruction on basic elements and concepts of a particular discipline, or (3) more advanced training in specific disciplines. The instruction may also illustrate appropriate materials and instructional teaching strategies for classroom use, as well as local resources that are applicable to classroom instruction.

(42 U.S.C. 1862)

[45 FR 86373, Dec. 30, 1980; 46 FR 26057, May 11, 1981]

§ 797.12 What types of projects are supported?

The types of projects supported under this program include but are not limited to:

(a) Academic Year Seminars—Part-time study offered at a central location for teachers within commuting distance, with sessions during the academic year.

(b) Summer Seminars—Part-time study offered during the summer at a central location for teachers within commuting distance with follow-up sessions during the academic year.

(c) Summer Workshops—Full-time projects offered during the summer, generally for 1 to 4 weeks. These projects normally will be regional and intended for more advanced training in specific disciplines. A limited follow-up activity may take place during the academic year.

(42 U.S.C. 1862)

Subpart C—How Does One Apply for a Grant? [Reserved]

Subpart D—How Is a Grant Made?

§ 797.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application on the basis of the criteria in § 797.31.

(b) The Secretary assigns a maximum of 70 points that an application may receive under all the criteria.

(c) Each criterion is evaluated using a scale of 1-7.

(d) The weight assigned to each complete criterion is indicated in parenthesis following each criterion.

(e) For applications of substantially equal quality, the Secretary gives priority to projects that, nationwide, contribute to achieving overall balance among projects funded under this program in the following categories:

(1) Grade level.

(2) Academic discipline.

(3) Institutional type.

(4) Geographic location.

(42 U.S.C. 1862; 20 U.S.C. 1221e-3(a)(1))

§ 797.31 What selection criteria does the Secretary use?

(a) *Plan of operation.* (10 percent)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (10 percent)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 percent)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to be objectives of the project.

(d) *Evaluation plan.* (5 percent)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 percent)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(iii) Evidence is presented of long term support and institutional commitment to pre-college science education from the host institution. (20 U.S.C. 1221(e)-3(a)(1))

(f) *Need for the project.* (20 percent)

(1) The Secretary reviews each application for information that shows a well-established need for the project.

(2) The Secretary looks for information that shows—

(i) An adequate needs assessment has been carried out;

(ii) Appropriate individuals, especially representative teachers, have been consulted in the needs assessment; and

(iii) Instructional needs have been clearly identified and stated.

(g) *Cooperative relationships.* (10 percent)

(1) The Secretary reviews each application for information that shows the extent to which cooperative teaching relationships will be established between preschool and elementary teachers and college and university faculty or other scientists.

(2) The Secretary looks for information that shows the extent to which the project will advance the long-term program objective of promoting useful relationships between preschool and elementary science teachers and college and university or other scientists beyond the term of the grant.

(h) *Subject matter emphasis.* (20 percent)

(1) The Secretary reviews each application for information that shows the extent to which subject matter in science is emphasized.

(2) The Secretary looks for information that shows—

(i) The extent to which a central focus on science curriculum is intergrated with appropriate teaching strategies; and

(ii) The appropriateness of the content for the designated teacher group.

(i) *Participant selection.* (10 percent)

(1) The Secretary reviews each application for information that shows the appropriateness of the participant selection process.

(2) The Secretary looks for information that shows—

(i) Adequacy of plans to recruit participants; and

(ii) Suitability of participant evaluation and selection procedures.

(42 U.S.C. 1862)

[45 FR 86373, Dec. 30, 1980; 46 FR 26057, May 11, 1981]

Subpart E—What Conditions Must Be Met by a Grantee?

§ 797.40 Who may participate in the projects?

(a) The program is designed for the continuing education of preschool and elementary school teachers.

(b) Other school leaders such as principals, assistant superintendents, or resource teachers, may team with one or two teachers to represent a school or system.

(42 U.S.C. 1862)

§ 797.41 What cost principles apply to this program?

(a) The general principles to be used in determining costs for projects supported by this program are referenced in Subpart E of the Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.530 through 75.568.

(b) The section governing indirect cost rates for educational training projects contained in § 75.562 of EDGAR does not apply to this program.

(20 U.S.C. 1221e-3(a)(1))

[45 FR 86373, Dec. 30, 1980; 46 FR 26057, May 11, 1981]

FINDING AIDS

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Equal Employment Opportunity Commission	29, XIV
Equal Opportunity, Office of Assistant Secretary for	24, I
Executive Office of the President	3, I
Administration, Office of	5, XV
Export-Import Bank of the United States	12, IV
Family Assistance, Office of	45, II
Farm Credit Administration	12, VI
Farmers Home Administration	7, XVIII
Federal Aviation Administration	14, I
Federal Claims Collection Standards	4, II
Federal Communications Commission	47, I
Federal Contract Compliance, Office of	41, 60
Federal Crop Insurance Corporation	7, IV
Federal Deposit Insurance Corporation	12, III
Federal Election Commission	11, I
Federal Emergency Management Agency	41, 44; 44, I
Federal Energy Regulatory Commission	18, I
Federal Financial Institutions Examination Council	12, XI
Federal Financing Bank	12, VIII
Federal Grain Inspection Service	7, VIII
Federal Highway Administration	23, I, II; 49, III
Federal Home Loan Bank Board	12, V
Federal Inspector for the Alaska Natural Gas Transportation System, Office of	10, XV
Federal Labor Relations Authority, and General Counsel of the Federal Labor Relations Authority	5, XIV; 22,XIV
Federal Law Enforcement Training Center	31, VII
Federal Maritime Commission	46, IV
Federal Mediation and Conciliation Service	29, XII
Federal Mine Safety and Health Review Commission	29, XXVII
Federal Pay, Advisory Committee on	5, IV
Federal Prison Industries	28, III
Federal Procurement Regulations	41, I
Federal Procurement Regulations System	41, Subtitle A
Federal Property Management Regulations	41, 101
Federal Property Management Regulations System	41, Subtitle C

Agency	CFR Title, Subtitle or Chapter
Federal Railroad Administration	49, II
Federal Register, Administrative Committee of	1, I
Federal Register, Office of	1, II
Federal Reserve System	12, II
Federal Services Impasses Panel	5, XIV
Federal Trade Commission	16, I
Fine Arts Commission	36, X; 45, XXI
Fiscal Service	31, II
Fish and Wildlife Service, United States	50, I, IV
Fishery Conservation and Management	50, VI
Fishing and Whaling, International Regulatory Agencies	50, III
Food and Drug Administration	21, I
Food and Nutrition Service	7, II
Food Safety and Inspection Service	9, III
Foreign Agricultural Service	7, XV
Foreign Assets Control, Office of	31, V
Foreign Claims Settlement Commission of United States	45, V
Foreign Economic Development Service	7, XXI
Foreign Service Grievance Board	22, IX
Foreign Service Impasse Disputes Panel	22, XIV
Foreign Service Labor Relations Board	22, XIV
Foreign-Trade Zones Board	15, IV
Forest Service	36, II
General Accounting Office	4, I, II, III
General Sales Manager, Office of	7, XXV
General Services Administration	41, 5
Acquisition Policy, Office of	41, 5A, 5B
Federal Procurement Regulations System	41, 1, 5A, 5B
Federal Property Management Regulations System	41, 101, 105
Geological Survey	30, II
Government National Mortgage Association	24, III
Great Lakes Pilotage	46, III
Harry S Truman Scholarship Foundation	45, XVIII
Health and Human Services, Department of	45, Subtitle A
Child Support Enforcement, Office of	45, III
Family Assistance, Office of	45, II
Federal Procurement Regulations System	41, 3
Food and Drug Administration	21, I
Harry S Truman Scholarship Foundation	45, XVIII
Health Care Financing Administration	42, IV
Human Development Office	45, XIII
Public Health Service	42, I
Refugee Resettlement, Office of	45, IV
St. Elizabeths Hospital	42, III
Social Security Administration	20, III; 45, IV
Health Care Financing Administration	42, IV
Housing and Urban Development, Department of	
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Equal Opportunity, Office of Assistant Secretary for	24, I
Federal Procurement Regulations System	41, 24
Government National Mortgage Association	24, III
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, IX, XX
Housing Management, Office of Assistant Secretary for	24, IV
Low-Income Housing	24, VIII
Mortgage Insurance and Loan Programs Under Emergency Homeowners' Relief Act	24, XV
New Community Development Corporation	24, VII
Secretary, Office of	24, Subtitle A
Solar Energy and Energy Conservation Bank	24, X
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, IX, XX
Housing Management, Office of Assistant Secretary for	24, IV
Human Development Services Office	45, XIII
Immigration and Naturalization Service	8, I

Agency	CFR Title, Subtitle or Chapter
Indian Affairs, Bureau of	25, I; 41, 14H
Indian Arts and Crafts Board	25, II
Industrial Economics, Bureau of, Commerce Department	15, VI
Information Agency, United States	22, V; 41, 19
Information Security Oversight Office	32, XX
Inspector General, Office of, Agriculture Department	7, XXVI
Inter-American Foundation	22, X
Intergovernmental Relations, Advisory Commission on	5, VII
Interior Department	
Endangered Species Committee	50, IV
Federal Procurement Regulations System	41, 14
Federal Property Management Regulations System	41, 114
Fish and Wildlife Service, United States	50, I, IV
Geological Survey	30, II
Indian Affairs, Bureau of	25, I; 41, 14H
Indian Arts and Crafts Board	25, II
Land Management Bureau	43, II
Mines, Bureau of	30, VI
National Park Service	36, I
Reclamation Bureau	43, I
Secretary of the Interior, Office of	43, Subtitle A
Surface Mining and Reclamation Appeals, Board of	30, III
Surface Mining Reclamation and Enforcement, Office of	30, VII
United States Fish and Wildlife Service	50, I, IV
Water Research and Technology, Office of	41, 14R
Water Resources Research, Office of	18, IV
Internal Revenue Service	26, I
International Boundary and Water Commission, United States and Mexico	22, XI
International Communication Agency	22, V; 41, 19
International Development, Agency for	22, II; 41, 7
International Development Cooperation Agency	22, II; 41, 7
International Joint Commission, United States and Canada	22, IV
International Organizations Employees Loyalty Board	5, V
International Regulatory Agencies (Fishing and Whaling)	50, III
International Trade Administration	15, III; 19, III
International Trade Commission, United States	19, II
Interstate Commerce Commission	49, X
Joint Board for the Enrollment of Actuaries	20, VIII
Justice Department	28, I; 41, 128
Drug Enforcement Administration	21, II
Federal Claims Collection Standards	4, II
Federal Prison Industries	28, III
Federal Procurement Regulations System	41, 28
Foreign Claims Settlement Commission of the United States	45, V
Immigration and Naturalization Service	8, I
Prisons, Bureau of	28, V
Labor Department	
Benefits Review Board	20, VII
Employees' Compensation Appeals Board	20, IV
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Federal Contract Compliance, Office of	41, 60
Federal Procurement Regulations System	41, 29, 50
Labor-Management Relations, Office of the Assistant Secretary	29, II
Labor-Management Standards Enforcement, Office of	29, IV
Mine Safety and Health Administration	30, I
Occupational Safety and Health Administration	29, XVII
Pension and Welfare Benefit Programs	29, XXV
Public Contracts	41, 50
Secretary of Labor, Office of	29, Subtitle A
Wage and Hour Division	29, V
Workers' Compensation Programs, Office of	20, I
Labor-Management Relations, Office of Assistant Secretary	29, II

Agency	CFR Title, Subtitle or Chapter
Labor-Management Standards Enforcement, Office of	29, IV
Land Management, Bureau of	43, II
Legal Services Corporation	45, XVI
Library of Congress	36, VII
Copyright Office	37, II
Low-Emission Vehicle Certification Board	40, IV
Low-Income Housing, Department of Housing and Urban Development	24, VIII
Management and Budget, Office of	5, III
Marine Mammal Commission	50, V
Maritime Administration	46, II
Merit Systems Protection Board	5, II
Micronesian Status Negotiations, Office for	32, XXVII
Mine Safety and Health Administration	30, I
Mines, Bureau of	30, VI
Miscellaneous Agencies	1, IV
Monetary Offices	31, I
Mortgage Insurance and Loan Programs Under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development	24, XV
National Aeronautics and Space Administration	14, V; 41, 18
National Bureau of Standards	15, II
National Commission on Libraries and Information Science	45, XVII
National Commission on the Observance of International Women's Year	45, XIX
National Credit Union Administration	12, VII
National Foundation on the Arts and the Humanities	45, XI
National Highway Traffic Safety Administration	23, II; 49, V
National Labor Relations Board	29, I
National Marine Fisheries Service	50, II, IV
National Mediation Board	29, X
National Oceanic and Atmospheric Administration	15, IX; 50, II, VI
National Park Service	36, I
National Railroad Adjustment Board	
National Railroad Passenger Corporation (AMTRAK)	49, VII
National Science Foundation	45, VI; 41, 25
National Security Council	32, XXI
National Security Council and Office of Science and Technology Policy	47, II
National Telecommunications and Information Administration	15, XXIII
National Transportation Safety Board	49, VIII
Navajo and Hopi Indian Relocation Commission	25, IV
Navy Department	32, VI
Neighborhood Reinvestment Corporation	24, XXV
New Community Development Corporation	24, VII
Nuclear Regulatory Commission	10, I; 41, 20
Occupational Safety and Health Administration	29, XVII
Occupational Safety and Health Review Commission	29, XX
Overseas Private Investment Corporation	22, VII
Packers and Stockyards Administration	9, II
Panama Canal Regulations	35, I
Patent and Trademark Office	37, I
Peace Corps	22, III
Pennsylvania Avenue Development Corporation	36, IX
Pension Benefit Guaranty Corporation	29, XXVI
Pension and Welfare Benefit Programs, Department of Labor	29, XXV
Personnel Management, Office of	5, I; 41, 16; 45, VIII
Postal Rate Commission	39, III
Postal Service, United States	39, I
Postsecondary Education, Office of	34, VI
President's Commission on White House Fellowships	1, IV
Presidential Documents	3
Prisons, Bureau of	28, V
Privacy Protection Study Commission	1, IV

Agency	CFR Title, Subtitle or Chapter
Procurement Regulations System, Federal	41, Subtitle A
Property Management Regulations System, Federal	41, Subtitle C
Public Contracts, Department of Labor	41, 50
Public Health Service	42, I
Railroad Retirement Board	20, II
Railway Association, United States	49, IX
Reclamation Bureau	43, I
Refugee Resettlement, Office of	45, IV
Regional Action Planning Commissions	13, V
Research and Special Programs Administration	49, I
Rural Electrification Administration	7, XVII
Rural Telephone Bank	7, XVI
Saint Elizabeths Hospital	42, III
Saint Lawrence Seaway Development Corporation	33, IV
Science and Technology Policy, Office of	32, XXIV
Science and Technology Policy, Office of, and National Security Council	47, II
Secret Service	31, IV
Securities and Exchange Commission	17, II
Selective Service System	32, XVI
Small Business Administration	13, I
Smithsonian Institution	36, V
Social Security Administration	20, III; 45, IV
Soil Conservation Service	7, VI
Solar Energy and Energy Conservation Bank, Department of HUD	24, X
Soldiers' and Airmen's Home, United States	5, XI
Special Education and Rehabilitative Services, Office of	34, III
Special Representative for Trade Negotiations, Office of	15, XX
State Department	22, I
Federal Procurement Regulations System	41, 6
Surface Mining and Reclamation Appeals, Board of	30,III
Susquehanna River Basin Commission	18, VIII
Tennessee Valley Authority	18, XIII
Trade Representative, United States, Office of	15, XX
Transportation, Department of	
Coast Guard	33, I; 46, I, III; 49, IV
Federal Aviation Administration	14, I
Federal Highway Administration	23, I, II; 49, III
Federal Procurement Regulations System	41, 12
Federal Railroad Administration	49, II
Highway Safety Program Standards	23, II
Maritime Administration	46, II
National Defense	44, IV
National Highway Traffic Safety Administration	23, II; 49, V
Research and Science Programs Administration	49, I
Saint Lawrence Seaway Development Corporation	33, IV
Secretary, Office of	49, Subtitle A
Urban Mass Transportation Administration	49, VI
Travel Service, United States	15, XII
Treasury Department	
Alcohol, Tobacco and Firearms, Bureau of	27, I
Comptroller of the Currency	12, I
Customs Service, United States	19, I
Engraving and Printing, Bureau of	31, VI
Federal Law Enforcement Training Center	31, VII
Federal Procurement Regulations System	41, 10
Fiscal Service	31, II
Foreign Assets Control, Office of	31, V
Internal Revenue Service	26, I
Monetary Offices	31, I
Secret Service	31, IV
Secretary of the Treasury, Office of	31, Subtitle A
Truman, Harry S, Scholarship Foundation	45, XVIII
United States and Canada, International Joint Commission	22, IV
United States Arms Control and Disarmament Agency	22, VI; 41, 23

Agency	CFR Title, Subtitle or Chapter
United States Customs Service	19, I
United States Fish and Wildlife Service	50, I, IV
United States International Development Cooperation Agency	22, XII
United States International Trade Commission	19, II
United States Metric Board	15, V
United States Postal Service	39, I
United States Railway Association	49, IX
United States Soldiers' and Airmen's Home	5, XI
United States Trade Representative, Office of	15, XX
United States Travel Service	15, XII
Urban Mass Transportation Administration	49, VI
Veterans Administration	38, I; 41, 8
Vice President of the United States, Office of	32, XXVIII
Vocational and Adult Education, Office of	34, IV
Wage and Hour Division	29, V
Water Research and Technology, Office of	41, 14R
Water Resources Council	18, VI
Water Resources Research, Office of	18, IV
Welfare-Pension Reports, Office of Labor-Management and	29, IV
Workers' Compensation Programs, Office of	20, I

Redesignation Table

NOTE 1: The Department of Education Organization Act (Pub. L. 96-88) established the Department of Education (ED) as a new executive department.

On May 9, 1980 (45 FR 30802), the following parts were added to Title 34:

(a) Subtitle A consists of Parts 4, 5, 5b, 6, 7, 8, 10, 11, 12, 15, 17, 30, 35, 50, 63, 64, 67, 73, 74, and 79.

(b) Chapter I consists of Parts 100, 101, 104, and 106.

On November 21, 1980 (45 FR 77368), various parts appearing in Title 24, Chapter II, and Title 45, Chapters I, XIII, XIV, and XV, were transferred into Title 34 and redesignated. The following table shows the old part numbers as they appear in Titles 24 and 45 and the new part numbers as they appear in Title 34.

45 CFR Old Part Numbers	34 CFR New Part Numbers
Chapter I	
100a	75
100b	76
100c	77
100d	78
101	621
104	400
105.1-105.507	408
105.601-105.607	525
105.611-105.617	526
105.621-105.627	527
111	218
112	219
113	220
114	221
115	222
116	200
116a	201
116b	302
116c	203
116d	204
119	208
120	208
121a	300
121b	305
121c	307
121d	309
121e	315
121f	318
121g	320
121h	324
121k	336
121m	301
121o	330
121p	331
121q	332
121r	333
122a	537
123	500
123a	501
123b	502
123c	503
123d	504
123e	510
123f	514
123g	520
123h	515
123i	505
130	770
131	773
132	776
133	777
134	774
136	776
137	606
146	655
146a	667
147	Removed
148	662
149	603
150	639
151	790
153	Removed
154	644
155	645
157	646
158	215
159	643
160f	745
161	295
161a	296
161b	752
161c	753
161e	755
161f	419
161g	757
161h	758
161l	647
161m	763
162	765
162a	766
162b	767
162c	768
163	440
163a	441

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Title 34—Education

45 CFR Old Part Numbers	34 CFR New Part Numbers
163b	442
163c	443
163d	444
164	726
166	425
166a	426
166b	431
166c	432
168	668
169	624
170	617
172	793
173	610
174	674
175	675
176	676
177	682
178	686
178a	695
179	648
180	270
182	631
182a	740
184	769
185	280
186	250
186a	251
186b	252
186c	253
186d	254
186e	255
186f	256
186g	257
186h	258
186i	259
186j	260
186k	261
186l	262
187	263
189	629
190	690
191	211
192	692
193	796
194	649
195	345
195a	346
195b	347
196	650
197	240
198	241
199a	605
Chapter XIII	
1361	361
1362	362
1369	369
1370	370
Chapter XIV	
1400	700
1403	701
1410	702
1430	703
1440	705
1450	708
1451	710
1460	795
1470	714
1480	716
1490	718
1495	720
Chapter XV	
1501	730

24 CFR Old Part Numbers	34 CFR New Part Numbers
Chapter II	
279	614

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TABLE 1—List of CFR Sections Affected Formerly Appearing in Title 34, Government Management

Title 34, Government Management was vacated and existing regulations transferred to Title 5, Part 1310, at 44 FR 60286, Oct. 19, 1979.

All sections in former Title 34 of the Code of Federal Regulations which were affected by documents published in the Federal Register since December 7, 1973, are enumerated in the following list. Entries indicate the nature of changes effected. Page numbers refer to Federal Register pages. The user should consult the entries for chapters and parts as well as sections for revisions.

1973–1974

(Regulations published Dec. 7, 1973 to July 1, 1974)

34 CFR	38 (39*) FR Page
Title established	33769
Chapter II	
Chapter established	33769
200 Added	33769
211 Added	34731
231 Added	35464
232 * Added	2606
232 * Appendix B amended	10132
* Appendix C amended	10132
251 Added	33770
252 * Added	1582
253 * Added	797
254 * Added	1014
271 Added	34733
281 * Added	8615

1974–1975

(Regulations published July 1, 1974 through June 30, 1975)

34 CFR	39 (40†) FR Page
Chapter II	
212 Added	26641
212.4 (c)(5)(ii corrected	27322
(c)(4) and (5) revised	32559
213 Added	32134
232 Appendix A revised	41250
Appendix B revised	41251
Appendix C revised	41251
232.4 Revised	†3290
232.5 Revised	†3290
232.8-1 Added	†3290
233 Added	37367
234 Added	†6780
253.6 Revised	24632
255 Added	27133
256 Added	35787
Appendix O amended	†26031
256.5 (a revised	†26031
257 Added	42355
282 Added	29355

1975–1976

(Regulations published July 1, 1975 through June 30, 1976)

34 CFR	40 (41Δ) FR Page
Chapter II	
232 Appendix C amended	32329
233 Appendix A amended	30263
235 Added	Δ755
236 Added	48346
256 Appendix M amended (Standard Form 424)	54373
256.4 Revised	51038
256.5 (c) and (d) revised	51038

NOTE: Asterisk (*) identifies changes published in 1974.

NOTE: Symbol (†) refers to 1975 page numbers.

NOTE: Symbol (Δ) refers to 1976 page numbers.

1976–1977

(Regulations published July 1, 1976 through June 30, 1977)

34 CFR	41 (42*) FR Page
Chapter I	
Chapter established	*12
Chapter II	
Chapter heading revised	52454
200 (Subchapter A) Removed	52454
211-213 (Subchapter B) Removed	52454
232 Appendix A redesignated and revised as 41 CFR Subpart 101-38.13	*1477
233 Redesignated as 41 CFR 101-6.100—101.6.112-1 (Subpart 101-6.1) and revised	*14097
234 Removed	52454
235 Heading corrected	54487
236 Removed	52454
251-257 (Subchapter D) Removed	52454

NOTE: Symbol (*) refers to 1977 page numbers.

1977–1978

(Regulations published July 1, 1977 through June 30, 1978)

34 CFR	42 (43†) FR Page
Chapter II	
231 Removed	40695
232 Removed	56121
235 Removed	†2722
271 Removed	35833, 35853
281 Redesignated as 41 CFR 101-36.501—101-36.508 (101-36.5) in part	†27190
282 Redesignated as 41 CFR 101-35.201—101-35.210 (101-35.2) in part	†27190

1978–1979

(Regulations published July 1, 1978, through December 31, 1979)

34 CFR	43 (44Δ) FR Page
Title vacated and reserved	Δ60286
Chapter I	
Chapter removed and redesignated as 5 CFR Part 1310 (Subchapter B)	Δ60286
1 Added	Δ37913

NOTE: Symbol (†) refers to 1978 page numbers.

NOTE: Symbol (Δ) refers to 1979 page numbers.

TABLE 2
Transferred Regulations—Public Welfare
List of CFR Sections Affected

At 45 FR 77368, Nov. 21, 1980, various parts appearing in Title 45 Chapters I, XIII, XIV, and XV were transferred into Title 34 and redesignated. All changes in former Chapters I, XIII, XIV, and XV which were made by documents published in the FEDERAL REGISTER from January 1, 1973, through Sept. 30, 1981, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters and parts as well as sections for revisions.

For the period before January 1, 1973, see the "List of CFR Sections Affected. 1949-1963, and 1964-1972," published in three separate volumes.

1973

45 CFR	38 FR Page
Chapter I	
116.26 Revised	17127
166 Revised	16133
170 Revised	14096
175 Appendix A added	15960
176 Added	15960
177.2 Revised	25
177.4 (c)(3)(xiv) added	1509
(c)(3)(xv) added	9669
(c)(3)(xvi) added	20072
177.10 Added	25
180 Revised	16065
185 Added	3452
185.31—185.38 (Subpart D) Added	10094
185.44 (d)(3) revised	21646
185.51—185.56 (Subpart F) Added	10098
185.71—185.76 (Subpart H) Added	10101
185.81—185.85 (Subpart I) Added	10103
185.91—185.94 (Subpart J) Added	10104
185.95 (b)(1) and (3) revised	13563, 21647
186 Added	18018
187 Added	19826
189 Added	27825
190.31—190.39 (Subpart C) Added	15419
190.41—190.48 (Subpart D) Added	15421
Chapter XV	
Establishment of Chapter	13486
1501 Added	13486

1973–1974

(Regulations published from October 1, 1973 through September 30, 1974)

45 CFR	38 (39*) FR Page
Chapter I	
100a Added	30662
100a.10 *(a)(22) and (24) removed	19212
100a.400 *Revised	19212
100b Added	30679
100b.10 *(1) added	19213
100c Added	30691
101—190 Subchapter B heading added	30661
101.10—101.13 (Subpart B) *Added	19212
111.1 (a), (d), and (e) removed	30658
112.1 (b) and (h) removed	30659
113.1 (b) and (f) removed	30659
114.1 (b), (g), and (v) removed	30659
115.3 (b) and (d) removed	36059
116.1 (e), (j), (k), (m), (t), (u), (x), (y) and (bb) removed	30659
116.21 (a), (b), (c), (d), and (e) removed	30659
116.42 Removed	30659
116.46 Removed	30659
116.47 Removed	30659
116.48 Removed	30659
116.53 (a), (b), (c), and (e) removed	30659
116.54 Removed	30659
116.55 Removed	30659
116.56 Removed	30659
116.57 Removed	30659

NOTE: Asterisk (*) identifies changes published in 1974.

45 CFR—Continued

Chapter I—Continued

	38 (39*) FR Page
119.1 (c), (d), (e), (f), (g), (i), (k), and (l) removed	30659
119.7 Removed	30659
119.8 Introductory test revised	30659
119.21 Removed	30659
119.22 (b) removed	30659
119.23 Removed	30659
119.24 Removed	30659
119.25 Removed	30659
119.26 Removed	30659
119.27 Removed	30659
119.28 Removed	30659
119.40—119.52 (Subpart D) Removed	30659
123.1 (d), (h), (i), (n), (p), (q), and (r) removed	30659
123 *Revised	17965
123.2 Removed	30659
123.3 Removed	30659
123.6 Removed	30659
123.14 Removed	30649
123.21 Removed	30659
123.23 Removed	30659
123.24 Removed	30659
123.25 Removed	30659
123.26 Removed	30659
123.27 Removed	30659
123.28 Removed	30659
123.29 Removed	30659
123.35—123.38 (Subpart E) Removed	30659
123.44 (Subpart F) Removed	30659
130.2 Removed	30659
130.3 (b), (d), (f), and (g) removed	30659
130.5 (b)(1) through (6) and (8) through (16) removed	30659
130.22 (c) removed	30659
130.31—130.44 Removed	30659
130.52 Removed	30659
130.53 Removed	30659
130.55 Removed	30659
131.1 Revised	30659
131.2 (e), (f) and (n) removed	30660
131.6 Removed	30660
131.10 Removed	30660
131.12 Removed	30660
131.13 Removed	30660
131.14 Removed	30660
131.15 Removed	30660
131.16 Removed	30660
131.17 Removed	30660
132 *Revised	17540
132.1 Revised	30660
132.2 (b), (c), (d), and (e) removed	30660

NOTE: Asterisk (*) identifies changes published in 1974.

45 CFR—Continued

Chapter I—Continued

	38 (39*) FR Page
132.5 Removed	30660
132.6 Removed	30660
132.7 Removed	30660
132.8 Removed	30660
132.9 Removed	30660
132.10 Removed	30660
132.11 Removed	30660
132.12 Removed	30660
132.14 Removed	30660
132.16 Removed	30660
132.17 Removed	30660
132.18 Removed	30660
132.19 Removed	30660
132.20 Removed	30660
132.21 Removed	30660
132.22 Removed	30660
132.23 Removed	30660
132.24 Removed	30660
132.25 Removed	30660
132.26 Removed	30660
132.27 Removed	30660
133 *Added	17546
147.2 (e) and (f) removed	30660
149 *Added	30042
150.1 (f) removed	30660
151 Revised	*22147
151.2 (b), (d), (h), (j), (k), and (n) removed	30660
151.4 Removed	30660
151.5 (b) removed	30660
151.7 Removed	30660
151.8 Removed	30660
151.9 Removed	30660
151.11 Removed	30660
151.13 Removed	30660
151.14 Removed	30660
151.15 Removed	30660
151.16 Removed	30660
151.18 Removed	30660
151.19 Removed	30660
151.20 Removed	30660
151.21 Removed	30660
151.22 Removed	30660
151.23 Removed	30660
151.31 Removed	30660
151.32 Removed	30660
151.33 Removed	30660
151.34 Removed	30660
151.35 Removed	30660
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151.43 Removed	30660
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155.3 Removed	30660
155.7 (c) and (f) removed	30660
155.7 Revised	*19216
155.9 (a) removed	30660
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155.13 Removed	30660
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158 Revised	*22343
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166.3 (f), (g), (h), and (k) removed	30660
166.11 (a) revised	*18074
166.16 (a) removed	36060
166.21 (a) removed	30660
166.22 Removed	30660
166.23 Removed	30660
166.24 Removed	30660
166.25 Removed	30660
166.26 Removed	30660
166.27 Removed	30660
166.28 Removed	30660
166.29 Removed	30660
166.30 Removed	30660
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166.35 Removed	30660
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170.5 (b) removed	30660
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170.8 Removed	30660, *17104
170.13 (a)(4) removed	30660
170.14 (b) amended	30660
170.18 (a) and (c) removed	30660
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173.1 (b), (d), (e), (g), and (l) removed	30660

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173.24 Removed	30660
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173.27 Removed	30660
173.28 Removed	30660
173.29 Removed	30660
173.30 Removed	30660
173.31 Removed	30660
173.32 Removed	30660
173.33 Removed	30660
173.37 Removed	30660
174 Added	*10567
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175.3a Revised	*17547
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175.17 Removed	30660
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177.4 (c)(3)(xvii) added	27935
177.4 (c)(3)(xviii) added	*1849
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185.95 (b)(1) and (3) revised	*13270
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186.22 Removed	*22424
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187.3 Added.... 30661
187.21 Introductory text revised; (e), (f), (g), (h), (i), and (j) removed.... 30661, *17104
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115 Revised.... †16032
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130 Revised.... 41711
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130.16 (a)(2) amended.... †25013
130.17 (c) and (d) amended; (e) added.... †25013
130.18a Added.... †25013
130 Appendix A amended.... †25013
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177.50 Removed .... †7595
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177.71—177.78 (Subpart G) Added .... †7597
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